

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



ORIGINAL

75-7069

---

United States Court of Appeals  
FOR THE SECOND CIRCUIT

---

Docket Nos. 75-7069, 75-7208

COMPANIA ESPANOLA DE PETROLEOS, S.A.,  
*Plaintiff-Appellant-Cross-Appellee,*

*against*

NEREUS SHIPPING, S.A.,  
*Defendant-Appellee-Cross-Appellant.*

---

Docket No. 75-7206

HIDROCARBUROS y DERIVADOS, C.A.,  
*Plaintiff-Appellee,*

*against*

NEREUS SHIPPING, S.A.,  
*Defendant-Appellant,*

*and*

COMPANIA ESPANOLA DE PETROLEOS, S.A.,  
*Defendant-Appellee.*

---

Docket No. 75-7207

In the Matter of the Arbitration

*between*

HIDROCARBUROS y DERIVADOS, C.A.,  
*Petitioner-Appellee,*

*against*

NEREUS SHIPPING, S.A.,  
*Respondent-Appellant.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,  
FOR THE SOUTHERN DISTRICT OF NEW YORK

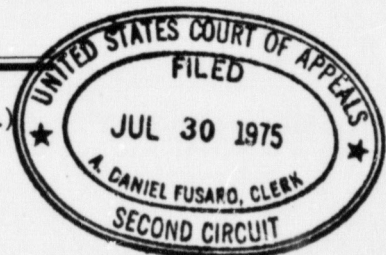
---

---

JOINT APPENDIX

---

(See inside of cover for names and addresses of attorneys.)



PAGINATION AS IN ORIGINAL COPY

BURKE & PARSONS  
*Attorneys for Nereus Shipping, S.A.*  
52 Wall Street  
New York, New York 10005  
(212) 344-1030

POLES, TUBLIN, PATESTIDES &  
STRATAKIS  
*Attorneys for Compania Espanola de  
Petroleos, S.A.*  
46 Trinity Place  
New York, New York 10006  
(212) 943-0110

BAKER & MCKENZIE  
*Attorneys for Hidrocarburos y  
Derivados, C.A.*  
375 Park Avenue  
New York, New York 10022  
(212) 751-5700

DONOVAN, DONOVAN, MALOOF & WALSH  
*Of Counsel to Baker & McKenzie*  
161 William Street  
New York, New York 10038  
(212) 964-3553

---



# INDEX TO APPENDIX

Page

## Docket Nos. 75-7069, 75-7208

COMPANIA ESPANOLA DE PETROLEOS, S.A.,  
*Plaintiff-Appellant-Cross-Appellee,*  
*against*  
 NEREUS SHIPPING, S.A.,  
*Defendant-Appellee-Cross-Appellant.*

Docket Entries.....	A1
Order to Show Cause and Temporary Restraining Order.....	A2
Complaint.....	A4
Affidavit of Theodore P. Daly in Support of Order to Show Cause and Temporary Restraining Order.....	A8
Affidavit of Patrick V. Martin in Support of Order to Show Cause and Temporary Restraining Order.....	A10
Exhibit A--Contract of Affreightment.....	A16
Exhibit B--Guaranty.....	A16e
Exhibit C--Notice of Arbitration (HIDECA to Nereus).....	A17
Exhibit D--Letter Dated September 9, 1974..	A19
Exhibit E--Notice of Arbitration (Nereus to CEPESA).....	A20
Exhibit F--Letter Dated September 16, 1974.....	A22
Exhibit G--Letter Dated October 25, 1974...	A29
Exhibit H--Letter Dated November 21, 1974.....	A31
Affidavit of Thomas A. Dillon, Jr. in Opposition to Order to Show Cause and Temporary Restraining Order.....	A33
Exhibit 1--Charter.....	A48
Exhibit 2--Telex Dated July 24, 1974.....	A55

*Index to Appendix*

	Page
Exhibit 3--Order of Attachment and Supporting Affidavits.....	A56
Exhibit 4--Affidavit of Demetrios Xistris Dated November 25, 1974.....	A67
Exhibit 5--Telex Dated August 2, 1974.....	A70
Exhibit 6--Telex Dated August 9, 1974.....	A71
Exhibit 7--Telex Dated August 22, 1974.....	A72
Exhibit 8--Telex Dated August 30, 1974.....	A74
Exhibit 9--Letter Dated September 16, 1974.	A75
Exhibit 10--Letter Dated November 4, 1974..	A76
Reply Affidavit of Patrick V. Martin in Support of Order to Show Cause and Tem- porary Restraining Order.....	A78
Exhibit A--Guaranty.....	A81
Exhibit B--Guaranty.....	A83
Exhibit C--Telex Dated March 12, 1971.....	A89
Exhibit D--Telex Dated April 19, 1971.....	A90
Reply Affidavit of Thomas A. Dillon, Jr. in Opposition to Order to Show Cause and Tem- porary Restraining Order.....	A91
Affidavit of Lawrence W. Newman.....	A95
Memorandum-Opinion of Stewart, D.J.....	A99
Plaintiff's Notice of Appeal.....	A108
Defendant's Notice of Appeal.....	A109

*Index to Appendix*

Page

**Docket No. 75-7206**

HIDROCARBUROS y DERIVADOS, C.A.,  
*Plaintiff-Appellee,*

*against*

NEREUS SHIPPING, S.A.,  
*Defendant-Appellant,*

*and*

COMPANIA ESPANOLA DE PETROLEOS, S.A.,  
*Defendant-Appellee.*

Docket Entries.....	A111
Complaint.....	A112
Notice of Motion for Preliminary Injunction and Temporary Restraining Order.....	A115
Proposed Preliminary Injunction.....	A117
Affidavit of David L. Maloof in Support of Motion for Preliminary Injunction and Temporary Restraining Order.....	A119
Exhibit A--Contract of Affreightment - Identical to Exhibit A annexed to Affi- davit of Thomas A. Dillon, Jr. printed herein at pages A48 to A54.	
Affidavit of Lawrence W. Newman in Support of Motion for Preliminary Injunction and Temporary Restraining Order.....	A128
Affidavit of Thomas A. Dillon, Jr. in Opposition to Motion for Preliminary Injunction and Temporary Restraining Order.....	A130
Exhibit 1--Memorandum of Stewart, D.J. - Identical to Memorandum-Opinion of Stewart, D.J. printed herein at pages A99 to A107.	
Exhibit 2--Affidavit of Lawrence W. Newman - Identical to Affidavit of Lawrence W. Newman printed herein at pages A95 to A98.	
Exhibit 3--Bank's Statement for Joint Escrow Account.....	A142

*Index to Appendix*

Page

Exhibit 4--Notice-Telex Dated July 24, 1974 - Identical to Exhibit 2 annexed to Affidavit of Thomas A. Dillon, Jr. printed herein at page A55.

Exhibit 5--Order of Attachment and Supporting Affidavits - Identical to Affidavit of Thomas A. Dillon, Jr. printed herein at pages A56 to A66.

Exhibit 6--Affidavit of Demetrios Xistris Dated November 25, 1974 - Identical to Exhibit 4 annexed to Affidavit of Thomas A. Dillon, Jr. printed herein at pages A67 to A69.

Exhibit 7--Letter Dated August 14, 1974 and Telex..... A144

Exhibit 8--Telex Dated August 2, 1974 - Identical to Exhibit 5 annexed to Affidavit Thomas A. Dillon, Jr. printed herein at page A70.

Exhibit 9--Telex Dated August 9, 1974 - Identical to Exhibit 6 annexed to Affidavit of Thomas A. Dillon, Jr. printed herein at page A71.

Exhibit 10--Telex Dated August 22, 1974 - Identical to Exhibit 7 annexed to Affidavit of Thomas A. Dillon, Jr. printed herein at pages A72 to A73.

Exhibit 11--Notice of Arbitration (HIDECA to Nereus) - Identical to Exhibit C annexed to Affidavit of Patrick V. Martin printed herein at pages A17 to A18.

Exhibit 12--Telex Dated August 30, 1974 - Identical to Exhibit 8 annexed to Affidavit of Thomas A. Dillon, Jr. printed herein at page A74.

Reply Affidavit of David L. Maloof in Support of Motion for Preliminary Injunction and Temporary Restraining Order..... A150

*Index to Appendix*

	Page
Reply Affidavit of Lawrence W. Newman in Support of Motion for Preliminary Injunction and Temporary Restraining Order.....	A155
Reply Affidavit of Thomas A. Dillon, Jr. in Opposition to Motion for Preliminary Injunction and Temporary Restraining Order.....	A166
Exhibit A--Invoice No. 254.....	A171
Exhibit B--Telex Dated March 8, 1974.....	A173
Exhibit C--Telex Dated March 22, 1974.....	A174
Exhibit D--Telex Dated April 8, 1974.....	A175
Exhibit E--Invoice No. 641.....	A176
Exhibit F--Invoice No. 683.....	A189
Exhibit G--Telex Dated May 20, 1974.....	A200
Further Reply Affidavit of David L. Maloof in Support of Motion for Preliminary In- junction and Temporary Restraining Order....	A201
Affidavit of Patrick V. Martin in Support of Motion for Preliminary Injunction and Tem- porary Restraining Order.....	A205
Exhibit I--Complaint (Nereus vs HIDECA)...	A211
Memorandum-Opinion of Stewart, D.J.....	A218
Notice of Appeal.....	A223

## Index to Appendix

Page

## Docket No. 75-7207

In the Matter of the Arbitration

between

DROCARBUROS y DERIVADOS, C.A.,  
Petitioner-Appellee,

against

NEREUS SHIPPING, S.A.,  
Respondent-Appellant.

Docket Entries.....	A225
Notice of Motion for Appointment of Arbitrator Pursuant to 9 USC §5.....	A226
Application for Appointment of Arbitrator....	A228
Order Designating Arbitrator.....	A232
Affidavit of Janna H. J. Bellwin in Support of Motion for Appointment of Arbitrator 9 USC §5.....	A234
Exhibit A--Contract of Affreightment - Identical to Exhibit 1 annexed to Affidavit of Thomas A. Dillon, Jr. printed herein at pages A48 to A54.	
Exhibit B--Notice of Arbitration (HIDECA to Nereus) - Identical to Exhibit C annexed to Affidavit of Patrick V. Martin printed herein at pages A17 to A18.	
Exhibit C--Letter Dated September 9, 1974 - Identical to Exhibit D annexed to Affidavit of Patrick V. Martin printed herein at page A19.	
Exhibit D--Affidavit of Lawrence W. Newman - Identical to Affidavit of Lawrence W. Newman printed herein at pages A128 to A129.	

*Index to Appendix*

	Page
Affidavit of Thomas A. Dillon, Jr. in Reply to Motion for Appointment of Arbitrator 9 USC §5.....	A240
Exhibit 1--Affidavit of Demetrios Xis- tris Dated July 26, 1974 - Identical to Affidavit of Demetrios Xistria (portion of Exhibit 3) annexed to Affidavit of Thomas A. Dillon, Jr. printed herein at pages A58 to A61.	
Exhibit 2--Affidavit of Demetrios Xis- tris Dated November 25, 1974 - Identical to Exhibit 4 annexed to Affidavit of Thomas A. Dillon, Jr. printed herein at pages A67 to A69.	
Exhibit 3--Bank Statement for Joint Escrow Account - Identical to Exhibit 3 annexed to Affidavit of Thomas A. Dillon, Jr. printed herein at page A142.	
Exhibit 4--Rules and Roster of the Society of Maritime Arbitrators.....	A250
Exhibit 5--Letter Dated January 16, 1975..	A282
Reply Affidavit of David L. Maloof in Support of Motion for Appointment of Arbitrator Pursuant to 9 USC §5.....	A290
Reply Affidavit of Lawrence W. Newman Dated February 20, 1975 - Identical to Reply Affidavit of Lawrence W. Newman printed herein at pages A155 to A165.	
Memorandum and Order of Judge Stewart - Identical to Memorandum-Union of Stewart, D.J. printed herein at pages A218 to A222.	
Notice of Appeal.....	A294

**Docket Nos. 75-7069, 75-7208**

**COMPANIA ESPANOLA DE PETROLEOS, S.A.,**  
*Plaintiff-Appellant-Cross-Appellee,*  
*against*

**NEREUS SHIPPING, S.A.,**  
*Defendant-Appellee-Cross-Appellant.*

# DOCKET ENTRIES

74 CIV 5102

DATE	PROCEEDINGS	DEB Order Judgment Noted /
Nov. 20-74	Filed complaint and issued summons.	
Nov. 21-74	Filed pl'tfs. OSC and TRO--ORDERED that the def't. show cause on Nov. 25, 1974 in Rm. 1506 at 5pm why an order should not be entered restraining def't. from proceeding with the arbitration demanded by def't.; ORDERED that security in the sum of \$5,000 be posted; ORDERED that this order expire within 10 days unless ext. for a period of good cause shown or by consent of the def't.; ORDERED that personal service be made on def'ts. attys. by Nov. 22, 1974 at 4pm. Stewart, J.	
Nov. 25-74	Filed def'ts. aff'dt. of Thomas Dillon, Jr. in opposition to pl'tfs. motion for prel. injunction.	
Nov. 25-74	Filed def'ts. brief in opposition to pl'tfs. motion for prel. injunction restraining arbitration.	
Nov. 27-74	Filed def'ts. reply aff'dt. of Thomas Dillon, Jr.	
Nov. 26-74	Filed pl'tfs. memorandum of law in support of motion for prel. injunction.	
Nov. 26-74	Filed pl'tfs. reply memorandum.	
Nov. 26-74	Filed pl'tfs. aff'dt. of Patrick V. Martin.	
Dec. 2-74	Filed def'ts. aff'dt. of Lawrence Newman.	
Dec. 13-74	Filed summons with marshal's return. Served on: Nereus Shipping by Francis Bradley on 12/9/74	
Dec. 18-74	Filed OPINION # 41599---Since we find on the merits for the def't., we need not consider whether injunctive relief is warranted in the instant case. For the reasons indicated, pl'tfs. motions for declaratory&injunctive relief are denied. This opinion shall be considered as findings of fact and conclusions of law as required by Rule 52(a) of the FRCP. So ordered, Stewart, J. m/n <i>(called Mr. Dillon, def't. atty. &amp; counsel on 12/18/74)</i>	
Jan 17-75	Filed pl'tfs. notice of appeal to the U.S. Court of Appeals for the Second Circuit from the Memorandum dated December 18, 1974. Copy mailed to Burke & Parsons, Esqs.	
02-10-75	Filed notice of record on appeal has been certified and transmitted to the U.S.C. A. on 2-10-75	
03-05-75	Filed notice of change of address by Atty. Poles, Tublin, Patesides & Stratakis (new address 46 Trinity place NYC Tel: 943-0110.	
03-26-75	Filed def't. notice of appeal to the U.S.C.A. for the second Circuit Memorandum decision of 3-20-75. Copy mailed to Donovan & Walsh, Baker & McKenzie and Poles, Tublin Patesides & Stratakis.	
04-07-75	Filed notice of supplemental record on appeal has been certified and transmitted to the USCA for the Second Circuit on 4-7-75.	

## ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x	
COMPANIA ESPANOLA DE PETROLEOS, S.A ,	:
	:
Plaintiff,	:
- against -	:
NEREUS SHIPPING, S.A.,	:
	:
Defendant.	:
-----x	:

74 Civ. 5102  
Judge Stewart  
ORDER TO SHOW  
CAUSE AND  
TEMPORARY  
RESTRAINING ORDER

Upon the verified complaint and the annexed affidavits of PATRICK V. MARTIN and THEODORE P. DALY, sworn to on November 20, 1974, and on motion of POLES, TUBLIN, PATESTIDES & STRATAKIS, attorneys for plaintiff, it is

ORDERED, that defendant show cause before me at the United States District Courthouse, Foley Square, Borough of Manhattan, City and State of New York, on the 20<sup>th</sup> day of November, 1974, at 5 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard in Room 1006 why an order for preliminary injunction should not be entered pursuant to Rule 65 of the Federal Rules of Civil Procedure, restraining defendant from proceeding with the arbitration demanded by defendant of the plaintiff in the matter of defendant's claim against plaintiff arising out of a contract of affreightment between defendant and HIDROCARBUROS Y DERIVADOS C.A. dated January 27, 1971, and it is further

ORDERED, that the defendant, its attorneys, and the Panel of Arbitrators appointed by it be, and they hereby are

*Order to Show Cause and Temporary Restraining Order*

temporarily restrained from holding any hearing or other proceeding in connection with the arbitration demanded by defendant of the plaintiff in the matter of defendant's claim against plaintiff arising out of the aforesaid contract of affreightment between defendant and HIDROCARBUROS Y DERIVADOS C.A., dated January 27, 1971, until trial and judgment in the plaintiff's action for a declaratory judgment; and it is further

CES ✓ ORDERED, that security in the sum of \$ 5,000 be posted; and it is further

ORDERED, that this order expire within 10 days unless extended for a like period for good cause shown or unless extended by the consent of defendant; and it is further

CES ✓ ORDERED, that personal service of this order upon defendant or its attorneys by November 22, 1974, 4 p.m. shall be deemed good and sufficient.

Dated: New York, New York  
November 21, 1974

/s/ Charles E. Stewart Jr.  
U.S. D. J.

ISSUED AT:

12:00 P.M.

## COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff,

- against -

NEREUS SHIPPING S.A.,

Defendant.

----- x

COMPLAINT

Plaintiff, COMPANIA ESPANOLA DE PETROLEOS, S.A.,  
through its attorneys, Poles, Tublin, Patestides & Stratakis,  
for its complaint against NEREUS SHIPPING S.A., defendant, alleges  
on information and belief as follows:

1. Plaintiff, COMPANIA ESPANOLA DE PETROLEOS, S.A., is  
a corporation duly organized and existing under the laws of Spain  
with an office and place of business at Number 32, Avenida de  
America, Madrid, Spain.

2. Defendant, NEREUS SHIPPING S.A., is a foreign  
corporation with an office and place of business at 1041 Third  
Avenue, New York City, New York, care of Triton Shipping Inc.

3. This is an action within the Admiralty and Maritime  
jurisdiction of this Court as defined by Rule 9(h) of the Federal  
Rules of Civil Procedure and as will hereinafter more fully appear.

4. On January 27, 1971, in the City of New York, the  
defendant entered into a contract of affreightment with  
HIDROCARBUROS Y DERIVADOS C.A., a foreign corporation, hereinafter

A        5  
*Complaint*

"HIDECA", for the transportation of about 1,800,000 tons of crude oil and/or Dirty Petroleum Products for the Persian Gulf to Europe, starting sometime between November 15, 1971 and January 15, 1972.

5. On June 24, 1971 in Madrid, Spain, the plaintiff issued a Letter of Guaranty by which it agreed that should HIDECA default in payment or performance of its obligation under the aforesaid contract of affreightment with defendant, it (the plaintiff) would, upon notice and in accordance with the other terms of said guaranty, perform the balance of the contract and assume the rights and obligations on the same terms and conditions as contained in the aforesaid contract of affreightment.

6. On September 3, 1974, defendant gave written notice to the plaintiff that it was claiming against plaintiff some \$3,500,000 in damages for alleged breach of the aforesaid contract of affreightment by HIDECA, demanding arbitration with plaintiff, and that it had appointed MR. LLOYD C. NELSON as arbitrator.

7. Plaintiff rejected this demand for arbitration on September 16, 1974, as improper, on the grounds that:

(a) Plaintiff is not subject to the arbitration clause of the aforesaid contract of affreightment; and

(b) HIDECA was not in default of its obligations under the contract and, in particular, had not defaulted on its obligation to submit its disputes with the defendant to arbitration.

8. The above well-grounded rejection of defendant's demand for arbitration notwithstanding, defendant has proceeded by notice dated November 4, 1974, to appoint MR. MANFRED W. ARNOLD as second arbitrator and the two arbitrators thus appointed by the defendant have appointed MR. HARRY G. WEBBER as third arbitrator. That the "panel" thus constituted are to meet at the offices of Burke and Parsons, 52 Wall Street, New York City, New York for the purpose of proceeding with the arbitration of defendant's claim against plaintiff on November 21, 1974.

9. Should this arbitration proceed, the plaintiff will thereby suffer irreparable harm.

WHEREFORE, plaintiff demands:

1. A declaratory judgment that:

(a) Plaintiff, COMPANIA ESPANOLA DE PETROLEOS, S.A., is not subject to the arbitration clause of the contract of affreightment between the defendant and HIDECA executed on January 27, 1974; or in the alternative

(b) an arbitration against plaintiff may only proceed should HIDECA default with respect to its obligations under the aforesaid contract, including the arbitration provision thereof, and

(c) the panel was improperly constituted, there being no arbitrable dispute between the defendant or plaintiff at the time of its appointment.

2. An injunction enjoining the defendant, its attorneys and the panel arbitrators from proceeding with any hearings and from issuing any award with respect to any claim against the plaintiff; and for such other relief as the court may find just and proper.

POLES, TUBLIN, PATESTIDES & STRATAKIS  
Attorneys for Plaintiff

By: 

A Member of the Firm

Office & P. O. Address

37 Wall Street

New York, N. Y. 10005

(212) 944-0580

(Verified)

AFFIDAVIT OF THEODORE P. DALY IN SUPPORT OF ORDER TO  
SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
COMPANIA ESPANOLA DE PETROLEOS, S.A.,	:	
Plaintiff,	:	
- against -	:	AFFIDAVIT
NEREUS SHIPPING S.A.,	:	
Defendant.	:	
-----X		

STATE OF NEW YORK )  
                              :    ss.:  
COUNTY OF NEW YORK)

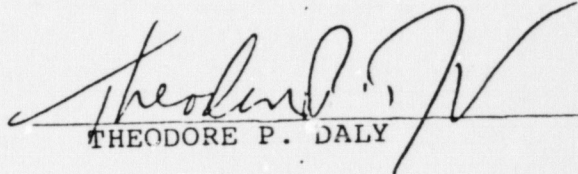
THEODORE P. DALY, being duly sworn deposes and says that he is a member of the firm of POLES, TUBLIN, PATESTIDES & STRATAKIS, attorneys for plaintiff COMPANIA ESPANOLA DE PETROLEOS, S.A., and makes this affidavit in support of plaintiff's motion for a temporary restraining order restraining defendant from proceeding with a certain arbitration which it has demanded of plaintiff arising out of defendant's contract of affreightment with Hidrocarburos Y Derivados C.A.

That he has given notice of plaintiff's motion for a restraining order and application for an order to show cause to THOMAS A. DILLON, ESQ. of Burke & Parsons, Esqs., attorneys for defendant, by telephone in the afternoon of November 20, 1974, and that Messrs. Burke & Parsons have consented to appear for argument on plaintiff's motion for a preliminary injunction at such time as fixed by the Court.

*Affidavit of Theodore P. Daly*

That no prior application for the relief sought herein has been made by or on behalf of the applicant to this or any other Court.

That the applicant is proceeding by Order to Show Cause to obtain a restraining order rather than proceeding by motion because time would not permit the making of a motion upon the required notice and unless the relief sought herein is granted and a restraining order made and served today, the arbitration that the applicant seeks to enjoin will proceed later this afternoon to the prejudice of the applicant and the other parties in that arbitration.

  
THEODORE P. DALY

Sworn to before me this

<sup>5<sup>th</sup></sup>  
21<sup>st</sup> day of November, 1974

Beatrix des Marets Dodge

BEATRIX DES MARETS DODGE  
Notary Public  
Qualified  
Commission Expires

AFFIDAVIT OF PATRICK V. MARTIN IN SUPPORT OF ORDER  
TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
COMPANIA ESPANOLA DE PETROLEOS, S.A., :  
 :  
Plaintiff, :  
 :  
v. : AFFIDAVIT  
 :  
NEREUS SHIPPING S.A., :  
 :  
Defendant. :  
-----x

PATRICK V. MARTIN, being duly sworn, deposes and says:

I am a member of the firm of POLES, TUBLIN, PATESTIDES & STRATAKIS, attorneys for the plaintiff, COMPANIA ESPANOLA DE PETROLEOS, S.A., a Spanish corporation, (hereinafter "CEPSA").

I make this affidavit in support of the plaintiff's application for an order staying the arbitration of any alleged disputes between CEPSA and the defendant, Nereus Shipping, S.A., a Liberian corporation, (hereinafter "NEREUS") pending an adjudication of plaintiff's instant action for declaratory judgment.

Based on documents and records given to us by CEPSA, and upon information and belief, the facts are as follows:

1. Defendant, NEREUS, and Hidrocarburos Y Derivados S.A., a Venezuelan corporation, (hereinafter "HIDECA") entered into a contract of affreightment dated New York, New York, January 27, 1971, (hereinafter the "COA") for the carriage of

about 1,800,000 tons of crude oil from the Persian Gulf to Spain according to the terms and conditions thereof. (A copy of the Contract of Affreightment is annexed hereto as Exhibit "A"). The COA is on the standard form of EXXONVOY charter party with certain deletions and additional clauses as agreed upon by NEREUS and HIDECA.

In the COA, NEREUS is described as the "Owner" and HIDECA as "Charterer".

Clause 24 of the COA provides for arbitration of disputes between the Owner and the Charterer as follows:

"24. ARBITRATION. Any and all differences and disputes of whatsoever nature arising out of this charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in par. 1 of this charter pursuant to the laws relating to arbitration there in force before a board of three persons consisting of one arbitrator to be appointed by the Owner, one by the charterer and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not by notice served upon an officer or the first moving party within twenty days of the service

of such first notice appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator who shall be a disinterested person with precisely the same force and effect as if said second arbitrator has been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator either arbitrator may apply to a Judge of any court of maritime jurisdiction in the city above mentioned for the appointment of a third arbitrator and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearing, either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees and judgment may be entered upon any award made hereunder in any court having jurisdiction in the premises."

2. CEPASA, the plaintiff herein, entered into a contract of Guaranty, dated at Madrid, Spain, on June 24, 1971, (hereinafter the "Guaranty") pursuant to which it agreed to

*Affidavit of Patrick V. Martin*

guaranty certain of HIDECA's obligations under the COA (a copy of the Guaranty is annexed hereto as Exhibit "B").

3. Upon information and belief, during the performance of the COA certain disputes arose between NEREUS and HIDECA.

4. On or about August 23, 1974, HIDECA, through its attorneys Baker & McKenzie, served on NEREUS a Notice of Arbitration and named as its arbitrator Professor Andreas F. Lowenfeld (a copy of said Notice of Arbitration is annexed hereto as Exhibit "C").

5. By letter of September 9, 1974, Burke & Parsons acting on behalf of NEREUS, named Mr. Lloyd Nelson as its arbitrator. (A copy of said letter is annexed hereto as Exhibit "D").

6. On September 3, 1974 NEREUS served on CEPESA a Notice of Arbitration (a copy of said Notice is annexed hereto as Exhibit "E").

7. By letter dated September 16, 1974, CEPESA rejected the purported Notice of Arbitration and declined to nominate an arbitrator. (A copy of the Spanish notatarial certificate embodying the terms of the letter is annexed hereto as Exhibit "F").

8. On October 23, 1974, in a conversation with Mr. Nelson, I was advised that Burke and Parsons had nominated a second arbitrator, Mr. Manfred Arnold, and the two so nominated had appointed Mr. Harry Webber as a third arbitrator. On October 25, 1974 I wrote to the three arbitrators requesting that they take no further steps until such time as there had been a

determination as to their legal capacity to act. (A copy of this letter is annexed hereto as Exhibit "G").

9. On November 4, 1974, we were advised by letter from Burke and Parsons that the first hearing of the purported panel had been set for November 21, 1974 at 4:00 p.m. (A copy of this letter is annexed hereto as Exhibit "H").


10. CEPESA, as indicated in Exhibit "F" referred to above and annexed hereto, has refused to proceed to arbitration with NEREUS on the grounds that (a) the Letter of Guaranty does not incorporate the arbitration clause in the COA; if the parties had intended to include an arbitration clause, it would have been simple for them to have done so; (b) there being no arbitration clause in its Letter of Guaranty, CEPESA has not consented to the arbitration of any dispute with NEREUS; and (c) even if the guaranty be construed so as to obligate CEPESA to submit to arbitration of NEREUS' claims against HIDECA in HIDECA's place and stead, such obligation could never arise unless HIDECA first defaulted in its obligations to answer in arbitration. Since HIDECA and NEREUS are proceeding to arbitration of their disputes the demand on CEPESA to arbitrate is in any case gratuitous and without any basis in the contract.

11. The restraining order sought herein is necessary in order to preserve the position of the parties pending the determination of the principal action, plaintiff's suit for declaratory judgment. Seeking a declaratory judgment is the only viable option open to the plaintiff. If the plaintiff

*Affidavit of Patrick V. Martin*

were to proceed to arbitrate, it would probably be deemed to have accepted NEREUS' contention that the plaintiff is required to arbitrate and to have submitted to the jurisdiction of the arbitrators and to be estopped from later contesting such jurisdiction. If the plaintiff should do nothing other than merely refuse to participate in the arbitration, and it should later be found, for whatever reasons, to be properly a party to the arbitration agreement, then it would have acted at its peril and lost its opportunity to contest the issues in dispute.

From the foregoing, it is apparent that a restraining order should be granted to preserve the positions of the parties pending a resolution of the issue of whether the plaintiff is a party to the arbitration agreement.

  
PATRICK V. MARTIN

Sworn to before me this  
20<sup>th</sup> day of November, 1974

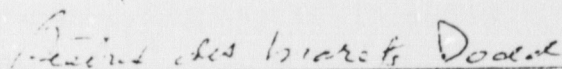
  
Notary Public

EXHIBIT A--CONTRACT OF AFFREIGHTMENT ANNEXED TO  
AFFIDAVIT OF PATRICK V. MARTININTERNATIONAL INC.  
SUPPLY AND TRANSPORTATION DEPARTMENTCODE WORD FOR THE  
CHARTER PARTY:

ESSOVVOY

1969

DUPLICATE

## TANKER VOYAGE CHARTER PARTY

A. & B.  
CO., INC.  
NEW YORK

## PREAMBLE

New York, N.Y.  
Place27 January 1971  
Date

IT IS THIS DAY AGREED between NEREUS SHIPPING S.A. as Agents for

owner (hereinafter called the "Owner") of the vessel per nomination

S/MS vessel per nomination

(hereinafter called the "Vessel")

and HIDROCARBUROS Y DERIVADOS C.A. (HIDECA)

(hereinafter called the "Charterer")

that the transportation herein provided for will be performed subject to the terms and conditions of this Charter Party, which includes this Preamble and

Part I and Part II. In the event of a conflict, the provisions of Part I will prevail over those contained in Part II.

## PART I

Description and Position of Vessel: (See Clause Two)

Deadweight: 50 per nomination  
tons (2240 lbs.)

Classed:

Loaded draft of Vessel on assigned summer freeboard as per ft. nomination  
in salt water.

Capacity for cargo: tons (of 2240 lbs. each) % more or less, Vessel's option. (See Clause Two)

Coated: ☐ Yes ☒ NoCoiled: ☒ Yes ☐ NoLast two cargoes: Crude and/or Dirty Petroleum Products  
and/or harmless dry bulk commodities

New: Trading or Newbuilding

Expected Ready:

Laydays:

Commencing: 15 November 1971

Cancelling: 15 January 1972

Loading Port(s): One (1) or two (2) safe ports Persian Gulf excluding Fao and Abadan

Charterer's Option

Discharging Port(s): One (1) or two (2) safe ports United Kingdom or Continent, Gibraltar Hamburg  
Rango, option Scandinavia within Institute Warreanics Limita or one (1) or  
two (2) safe ports Mediterranean excluding Israel and Egypt option  
Islands but always excluding all Communist or Communist controlled territories.

## Exhibit A Annexed to Affidavit of Patrick V. Martin

Cargo: Crude and/or Dirty Petroleum Products maximum two grades in accordance with each vessel's natural segregation maximum heat 135 degrees F. all cargoes will be restricted to a maximum API gravity of 30 at 60 degrees F. Charter's Option

Freight Rate: Worldscale One Hundred and Thirty (WS 130) (See Clause Six) per ton (of 2240 lbs. each).

Freight Payable: Norona Shipping S.A., Account 64214233 with First National City Bank, Two Broadway, New York or assigns in U.S. Dollars.

Time of Loading: 72 hours weather working excluding Sundays and Holidays unless used.

Demurrage per day: Per the Worldscale allowance based upon the nominated vessel's deadweight plus thirty (30) percent.

J. Commission of 3% is payable by Owner to Long, Quinn & Boylan Co., Inc. for division with others which includes two (2) percent address commission on the actual amount of freight, when and as freight is paid.

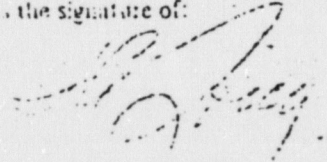
K. The place of General Average and arbitration proceedings to be London New York (strike out one) at Owner's expense

L. Exempt: Owner warrants vessel to be a member of TOVALOP scheme and will be so maintained unless and insofar as may be required by law. However Owners cannot make such warranty for vessels not under their effective management.

M. Special Provisions:

IN WITNESS WHEREOF, the parties have caused this Charter, consisting of a Preamble, Parts I and II, to be executed in duplicate as of day and year first above written.

the signature of:



NORONA SHIPPING, S.A., AS AGENTS FOR OWNERS

By:

P. G. CARROSSO - PRESIDENT

the signature of:



By:

EMILIO GONZÁLEZ ROMERO

Emilio González Romero.

Exhibit A Annexed to Affidavit of Patrick V. Martin

## PART II.

1. **WARRANTY-VOYAGE-CARGO:** The vessel, chartered as specified in Part I hereof, and to be so maintained during the currency of this Charter, shall, with all equipment and outfit, proceed as ordered to Loading Port(s) named in accordance with Clause 2 hereof, or so near thereto as she may safely get (always afloat), and being seaworthy, and having all pipes, pumps and heater coils in good working order, and being in every respect fitted for the voyage, so far as the foregoing conditions can be attained by the exercise of due diligence, to the ports of the sea and any other place or places (one or more) beyond the Owner's and/or Master's contract, and shall load (always afloat) from the factors of the Charterparty a cargo of petroleum and/or its products in bulk, not exceeding what is reasonably safe cargo of petroleum and/or its products in bulk, consumable stores, boiler fuel, ordinary and drinking water, and complement and their effects (sufficient space to be left in the tanks to provide for the expansion of the cargo), and being so loaded, to proceed, as ordered on signing bills of lading, direct to the Discharge Port(s), or so near thereto as she may safely get (always afloat), and deliver said cargo (if heating of the cargo is requested by the Charterer, the Owner shall exercise due diligence to maintain the temperatures requested).

2. **FREIGHT.** Freight shall be at the rate stipulated in Part I and shall be computed on net quantity (except deadweight as per Clause 3) as shown on the Inspector's Certificate of Lumping. Payment of freight shall be made by Charterer without discount upon delivery of cargo at destination, for any discharge and/or advances made to the Master or Owner's agents at port of loading and/or discharge and cost of insurance thereon. No deduction of cargo shall be made for loss and/or sediment contained in the cargo. The weight of the Petroleum Inspector shall be arranged and paid for by the Charterer who shall forward the Charter with a copy of the Inspector's Certificate.

J. DEADFREIGHT. Should the Charterer fail to supply a full cargo, the Vessel may, at the Master's option, and shall, upon request of the Charterer, proceed on her voyage, provided that the tanks in which cargo is loaded are sufficiently filled to put her in seaworthy condition. In that event, however, deadfreight shall be paid at the rate specified in Part I hereof on the difference between the intake quantity and the quantity the Vessel would have carried if loaded to her minimum permissible freeboard for the voyage.

### 5. NAMING LOADING AND DISCHARGE PORTS

1. NAMING LOADING AND DISCHARGE PORTS  
(a) The Charterer shall name the loading port or ports at least twenty-four (24) hours prior to the Vessel's readiness to sail from the last previous port of discharge, or from bunkering port for the voyage, or upon signing this Charter if the Vessel has already sailed. However, Charterer shall have the option of ordering the Vessel to the following destinations for wireless orders:

ST. KITTS  
PORT SAID

On a voyage to a port or ports in:  
Caribbean or U.S. Gulf loading port(s)  
Eastern Mediterranean or Persian Gulf loading port(s)  
(from a point west of Col. Sold.)

(b) If lawful and consistent with Part I and with the Bill of Lading, the Charter shall have the option of nominating a discharging port or ports by rail to the Master on or before the vessel's arrival at or off the following place:

On a voyage to a port or ports in:  
United Kingdom/Continent (Bordetia/Lamberg range)  
— Scandinavia (including Denmark) —

SHFZ  
CIRKALTER

(c) Any extra expense incurred in connection with any change in loading or discharging ports (so named) shall be paid for by the Charterer and any time thereby lost to the vessel shall count as used laytime.

5. **LAYTIME.** Laytime shall not commence before the date stipulated in Part I, except in the Charterer's sanction. Should the Vessel not be ready to load by 4.00 p.m. (local time) on the cancelling date stipulated in Part I, the Charterer shall have the option of cancelling this Charter by giving Owner notice of such cancellation with twenty (24) hours after such cancellation date, otherwise this Charter to remain in full force and effect.

[illegible]

7. **HOURS FOR LOADING AND DISCHARGING.** The number of running hours specified as laytime in Part I shall be permitted the Charterer as laytime for loading and discharging cargo; but any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to load or discharge cargo within the time allowed shall not count as used laytime. If regulations of the Owner or port authorities prohibit loading or discharging cargo at night, time so lost shall not count as used laytime. If the Charterer, shipper or consignee prohibits loading or discharging at night, time so lost shall count as used laytime. Time consumed by the vessel in moving from loading or discharge port anchorage to her loading or discharge berth, discharging ballast water, or slops, will not count as used laytime.

9. DEMURRAGE. Charterer shall pay demurrage per running hour and pro rata to cargo part thereof at the rate specified in Part I for all time that loading and discharging and unloading and stowage or otherwise herein provided exceeds the allowed time for loading and discharge and unloading and stowage or otherwise herein provided. If, however, demurrage shall be incurred at ports of call, stoppage or restraint of labor or by reason of fire, explosion, strike or by any other cause, not equipment or about the plant of the Charterer, supplied by or on behalf of the Charterer, the cargo, the rate of demurrage shall be reduced one-half of the rate specified in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by the crew of the vessel, stoppage or restraint of labor for Master, officers and crew of the vessel, stoppage or restraint of labor for pilots.

9. **SAIL; BERTHING-SHIFTING.** The vessel shall load and discharge at any safe place or wharf, or alongside the vessels or lighters reachable on her arrival, which shall be designated and provided by the Charterer, provided the Vessel can proceed thereto, lie at and depart from always safely afloat, any lighterage being at the expense, risk and peril of the Charterer. The Charterer shall have the right of shifting the Vessel at ports of loading and discharge from one safe berth to another on payment of all towage and pilotage charges in next berth, charges for running lines on arrival at and leaving that berth, and for all other extra port charges or port expenses incurred by reason of using more than one berth. Time consumed on account of shifting shall count as used in time except as otherwise provided in Clause 11.

[illegible]

11. **HOSES; MOORING; AT SEA TERMINALS** Hoses for loading and discharge shall be furnished by the Charterer and shall be connected and disconnected by the Captain, or, at the option of the Charterer, by the Owner at the Charterer's risk and expense. Lashing shall continue until the hoses have been disconnected. When Vessel loads or discharges at a sea terminal, the Vessel shall be properly equipped at Owner's expense.

neglect, default or battery on the part of the Captain, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; the undersigned by the personal act and neglect of the Owner, collector, forwarding or perils, danger or accident of the sea or other navigable waters; arising or attending in the saving life or property, wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of the cargo, or neglect or omission of the Charterer or Owner, shipper or consignee of the cargo, or the agent or representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting or bursting of boilers, leakage of shafts, or any latent defect in hull, equipment or machinery, or the unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of the Owner. And neither the Vessel nor Charter or Owner, nor the Charterer, shall be liable otherwise in this Charter capacity provided, be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from:-Act of God; act of war; perils of the seas; act of public enemies; pirates or robbing thieves; arrest or restraint of process, rulers or power; or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; riot or civil commotion.

## 20. ISSUANCE AND TERMS OF BILLS OF LADING

(a) The Master shall, upon request, sign bills of Lading in the form appearing below for all cargo shipped but without prejudice to the rights of the Owner and Charterers under the terms of this Charter. The Master shall not be required to sign bills of Lading and no port which the Vessel cannot enter, remain at and leave in safety and always effect new bills at any blocked port.

(b) The carriage of cargo under this Charter party and under all bills of lading issued for the cargo shall be subject to the statutory provisions and other law relating to cargo specified in sub-paragraphs (i) through (vi) of this clause and such terms that be incorporated verbatim or be deemed incorporated by the reference in any such bill of lading to such sub-paragraphs and in any Act referred to therein, the word "cargo" shall include the Owner and the Chartered Owner of the Vessel.

(f) **CLAUSE ARAMOUNT.** This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 8, 1936, except that if this Bill of Lading is issued at a place where any other Act, convention or legislation gives statutory effect to the International Convention for the Unification of Certain Rules relating to Bills of Lading at Brussels, August 24<sup>th</sup>, 1924, then the Bill of Lading shall have effect, subject to the provisions of such Act, convention or legislation, the applicable Act, ordinance or legislative enactment which may be deemed appropriate by the Court incorporated herein and as amended from time to time. The Bill of Lading shall be deemed to incorporate all laws, ordinances or regulations of any country which may be enacted hereafter under the Act. If any term of this Bill of Lading be repugnant to the Act or any statute, such term shall be void to that extent but no further.

term shall be LIBERATION. In the event of accident, danger, damage or disaster, loss or after the commencement of the voyage, resulting from any cause whatsoever, whether or not the responsibility is or is not, for which, or for the consequence of which, the Charter is responsible by statute, contract or otherwise, the cargo shippers, consignees or owners of the cargo shall contribute with the Owner in General Average to the payment of sacrifices, losses or expenses of a General Average nature that may be made or incurred. It shall pay, salvage and special charges incurred in respect of the cargo. If a salvor salvaged or operated by the Owner, salvage shall be paid for as fully as if the said salvor ship or ships belonged to strangers. Such deposit as the Owner or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo shippers, consignees or owners of the cargo to the carrier before delivery.

**GENERAL AVERAGE.** General Average shall be adjusted, stated and settled according to York Antwerp Rules 1930 and, as to matters not provided for by those rules according to the laws and usages at the port of New York or at the port of London, whichever place is specified in Part I of this Charter. If a General Average statement is required, it shall be prepared at such port or place in the United States or United Kingdom, whichever country is specified in Part I of this Charter, as may be directed by the Owners, unless otherwise mutually agreed, by an Adjuster appointed by the Owner and approved by the Charterer. Such Adjuster shall attend to the settlement and the collection of the General Average subject to perform, charge a General Average Agreement and to act as Adjuster furnished by Owner and/or Charterer, and/or Owner and/or Consignee of cargo, reinsurance. Any cash deposit being made as security to pay General Average and/or claims shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared.

(iv) **NOTHING TO BLAME** If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, Pilot or the crew of the Vessel in the navigation or in the management of the vessel, the owners of the cargo carried on board the Vessel shall be liable for the loss of or damage to, or any claim whatsoever of the owners of said cargo, or payable by the other or recovered by the other or in carrying ship or his agents or servants of their claim against the carrying ship or Owner. The foregoing provisions shall not apply where the owners, operators or those in charge of the Vessel have taken all reasonable steps to avoid a collision or contact.

(v) **LIMITATION OF LIABILITY.** Any provision of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitations of, and exculpation from, liability accorded to the owner or chartered owner of vessels by any statute or rule of law for the time being in force.

(vi) WAR RISKS. (a) If any port of loading or of discharge named in this Charter-Party or in which the Vessel may properly be ordered pursuant to the terms of the Bill of Lading be blockaded, or

[illegible]

(c) The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, limits of call, stoppages, destinations, zones, waters, depth, or any other otherwise whatsoever given by the government of the nation or nations whose flag it flies, or by any other government or local authority, or by the de facto government of the local authority of its own nation or body acting and purporting to act as such, or by the authorities of any such government or authority, or by any committee or person having authority in any such government or authority, or by any such committee or person, in the exercise of the right to give any such directions or recommendations, if by reason of or in compliance with any such directions or recommendations, it is necessary, urgent, or such shall not be deemed a demurrage.

*Exhibit A Annexed to Affidavit of Patrick V. Martin*

loading or discharging at such place, including suitable ground tackle, mooring lines and equipment for handling submarine hoses.

17. **DUES-TAXES-CHARGES.** The Charterer shall pay all dues, dues and other charges on the cargo, including but not limited to Customs duties on the cargo. Vessel's local Registration tax, U.S. Taxes at Le Havre and Portuguese duties at Lisbon, Maranhão. The Charterer shall also pay all taxes on freight at loading or discharge. The Charterer shall also pay all taxes, assessments and governmental charges which may be levied or imposed in the future on the vessel or freight. The Charterer shall pay all dues and charges that, as on the vessel's date of delivery, are in arrears on the vessel's date of delivery. The Charterer shall also pay all taxes, assessments and governmental charges which may be levied or imposed in the future on the vessel or freight.

any wharf, dock, place or mooring facility arranged by the Charterer for the purpose of loading or discharging cargo, however, the Owner shall be responsible for charges for such facilities when used solely for Vessel's purposes, such as unloading Owner's cargo, bunkering, repairs, etc. inshore, during or after loading or discharging.

12. **UNFUNDING VAPOR PRESSURE.** Cargo shall not be shipped which has a vapor pressure at one hundred degrees Fahrenheit (100°F.) in excess of thirteen and one half pounds (13.5 lbs.) as determined by the current A.S.T.M. Method (Reid) D-123.

(b) FLASH POINT: Cargo having a flash point under one hundred and fifteen degrees Fahrenheit (158°F) (closed cup) A.S.T.M. Method D-56 shall not be loaded from the bottom but this clause shall not restrict the Chiefmate from loading or topping off Grade Oil from vessels or barges held or craned the bar at any port or place where bar conditions exist.

14. (4) If the cargo part of loading or discharge should be inaccessible owing to ice, the Charterer shall direct the vessel according to Master's judgment, notifying by telegraph or radio. If suitable, the Charterer, shipper or consignee, who is bound to telegraph or radio, requests the master's part, which is free from ice and where there are facilities for the loading or reception of the cargo in bulk. The whole of the time occupied from the time the vessel is diverted by reason of the ice until her arrival at an ice-free port of loading or discharge, in the case may be, shall be paid for by the Charterer at the demurrage rate stipulated in Part I.

(b) If on account of the the above mentioned it is dangerous to enter, or remain at any place in discharging place for fear of the vessel being trapped in or damaged, the Master shall communicate by telegraph or radio with the Charter shipper or consignee of the cargo, who shall telegraph or radio him in reply, giving orders to proceed to any other port or place (other than the place of danger) and to where there are the

15. TWO OR MORE PORTS COUNTING AS ONE. To the extent that the freight rate standard prescribed in Part I of these rules for a special grouping or combination of ports is applicable to two or more ports or points within each such grouping or combination, that combination shall constitute one port for purposes of calculating freight and demurrage only, subject to the following conditions:

(c) The later rate pay freight at the highest rate payable under Part I of hereof for a voyage between the loading and discharge ports of the Charter.

(2) All charges normally incurred by reason of using more than one berth shall be for Charterer's account as provided in Clause 9 hereof.

(c) Time consumed shifting between the parts or terminals within the particular coupling or combination shall not count as used by time.

d) Time consumed shifting between berths within one of the ports or terminals of the particular grouping or combination shall count as used laytime.

16. GENERAL CARGO. The Charterer shall not be permitted to ship any pack-  
aged goods or non-liquid bulk cargo of any description; the cargo the vessel is to load under  
this Charter is to consist only of liquid bulk cargo as specified in Clause 1.

17. 19. QUARANTINE. In the event the Charterer send the Vessel to any port or place where a quarantine exists, any delay therein caused to the Vessel shall count as dead time, but should the quarantine not be declared until the Vessel is on passage to such port, the Charterer shall not be liable for any return delay.

10. **DISBURGEMENT.** If the Vessel prior to or upon entering upon this Charter, has decked or stowed on board thereof which is not fit for its service, she shall, before proceeding to sea, be free of stowage, free wharf, be fumigated by the Owner at his expense, except that if the Charterer ordered the Vessel to an infected wharf the Charterer shall bear the expense of fumigation.

11.1.2. (14/1987) The Owner shall clean the tanks, pipes and pumps of the Vessel to the satisfaction of the Charterer's Inspector. The Vessel shall not be responsible for any deterioration of more than one quality of oil is supplied, nor for leakage, contamination or deterioration in quality of the cargo unless the Charterer's Inspector, at any time, notices or detects such results. Thus: (a) unforeseen losses existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (b) errors or fault of the servants of the Owner in the loading, care or discharge of the cargo.

14. GENERAL EXCPTIONS CLAUSE. The Hotel, her Master and Owner, shall not, and as obligor in this charter expressly provide, be responsible for any loss or damage, or delay or failure in performing hereunder, arising or resulting from: any act

It is by reason of compliance with any such direction or recommendation that the said does not proceed to the port or ports of discharge originally designated or to which the said HAVE been summoned pursuant to the terms of the Bill of Lading. The said is hereby notified that any such direction or recommendation shall not be binding on the said and that the said shall not be bound to comply therewith. It is further notified that the said shall not be bound to indemnify or to guarantee the contract of carriage of the cargo and the cargo shall be carried at the risk of the cargo owner. It is further notified that the said shall not be bound to indemnify or to guarantee the cargo and the cargo shall be carried at the risk of the cargo owner. It is further notified that the said shall not be bound to indemnify or to guarantee the cargo and the cargo shall be carried at the risk of the cargo owner.

(c) **DEVIANCIE CLAUSE:** The Vessel shall have liberty to call at any port or place, to render aid, to sail with or without pilots, to tow or to be towed, to go to the assistance of persons in distress, to deviate for the purpose of saving life or property or of landing any sick or injured person on board, and to call for fuel at any port or place in or out of the regular course of the voyage. Any salvage shall be for the sole benefit of the Owner.

21. (11b). The Owner shall have an absolute lien on the cargo for its freight, deadweight, demurrage and costs, including attorney fees, of recovering the same, which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any Bills of Lading covering the same or of any assignee therein.

22. **AGENTS.** The Owner shall appoint Vessel's agents at all ports.

23. **BREACH.** Damages for breach of this Charter shall include all provable expenses, and all costs of suit and attorney fees incurred in any action hereunder.

24. **ARBITRATION.** Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the County of London, whichever place is specified in Part I of this Charter presented to the arbitrator in arbitration there in force. Before a hearing of the arbitrator, each party shall be allowed to be represented by the same one or more persons, and the arbitrator shall have the discretion of any two of the three or any more of points shall be final. Either party hereto may call for such arbitration by service upon any officer of the City, where it may be found, of a written notice specifying the name and address of the arbitrator chosen by the moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon the officer of the first moving party within twenty days of the service of such first notice, consent to arbitrate in arbitrate the dispute or differences specified, then the last moving party shall have the right without further notice to appoint a second arbitrator, who shall be an impartial person with precisely the same power and effect as the first moving arbitrator.

ent of a third arbitrator, and the appointment of such an arbitrator shall have precedence the same as that of the arbitrator appointed by the two arbitrators. From such time as the arbitrator for either party shall be appointed, the other party by written notice served on the arbitrator for the other party shall specify further differences or differences under this Chapter for hearing and determination. Awards made in pursuance of this Chapter include costs, including a reasonable allowance for attorney's fees, and judgment may be entered upon any award hereunder in any Court having jurisdiction in the premises.

25. **SILENT CHARTER.** Charter shall have the right to publish the Vessel Charter, Charterer shall always remain responsible for the fulfillment of this Charter in all its terms and conditions.

24. OIL POLLUTION CLAUSE. Owner agrees to participate in Charterer's program covering oil pollution avoidance. Such program prohibits discharges overboard of oily water, oily bilge or oil in any form of a persistent nature, except under extreme circumstances whenever the safety of the vessel, CREW or life at sea would be jeopardized.

Upon notice being given to the Owner that Oil Pollution Avoidance: engine's were tampered, the Owner went on that the Master in return for board the vessel all my refuel from consolidated tank within 3 days, ballast, etc., in one compartment, after that time I will not be responsible for any oil pollution. All water separated to be discharged overboard.

If the Converter requires that demodulators shall be used for the separation of channels, said demodulators shall be obtained by the Converter and sold for his Client's use.

The oil residues will be pumped ashore at the loading or discharging terminal, either as segregated oil, dirty light or contaminated with cargo as it is practical to collect. It is arranged, if it is necessary to retain the residual oil, to be pumped into a tank or tanks for storage. These tanks can be used for any other oil residue.

the Master shall ensure that the quantity of tank washings be recorded in the cargo record book and a duplicate quantity measure a grade in the vessel's ullage record.

The Charterparty also provides for the terms of the Charter Party on re-consolidated tank washings, dirty ballast, etc., retained on board until a Charterparty notice during the loaded portion of the voyage up to a maximum of 1% of the total dead weight of the vessel shall be legally earned for such voyage. Any extra expense incurred by the vessel at loading or discharging ports in pumping a shore oil or other tank for Charterer's account, and extra time, if any, consumed for this operation shall count as laytime.

## BILI. OF LADING

shipped in apparent good order and condition by

on board the

## Steamship Motorship

whereof \_\_\_\_\_ is Master, at the port of \_\_\_\_\_

to be delivered at the port of

or so near thereto as the Vessel can safely get, always afloat, unto

or order on payment of freight at the rate of

This shipment is carried under and pursuant to the terms of the charter dated New York/London

Leuren \_\_\_\_\_ and \_\_\_\_\_

Charter, and all the terms whatsoever of the said <sup>contract</sup> charter except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this agreement.

In witness whereof the Master has signed

of this tenor and date, one of which being accomplished, the others will be void.

Tested at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

Master:

## Exhibit A Annexed to Affidavit of Patrick V. Martin

1. This Contract of Affreightment will remain in full force and effect for a total quantity of 600,000 long tons ten (10) percent more or less per year at Owner's option fairly evenly spread for a period of three (3) years.
2. Vessels to be classed highest ABS or equivalent. The sizes of vessels to be at Owner's option between 65,000 long tons cargo ten (10) percent more or less at Owner's option to 145,000 long tons cargo ten (10) percent more or less at Owner's options but total deadweight of any vessel not to exceed 174,000 long tons. But with vessel of no more than twenty (20) years of age, if older extra insurance on cargo for Owner's account.
3. Owners to give Charterers 45 days notice of intended nomination of each vessel loading under this contract and shall further give 30 days notice of definite nomination. Charterers shall within five (5) days of definite nomination stipulate the loading port and voyage orders. In addition, Owners shall give Charterers estimated program one (1) month prior each calendar quarter for that quarter.  
  
Owner has the right to substitute a vessel of similar size and position on any nomination subject to suppliers' approval which shall not be unreasonably withheld.
4. Understood Worldscales terms and conditions and any amendments thereto to apply throughout this contract.
5. Any increase in War Risk Insurance premiums on vessel and/or crew and/or Crew War Bonuses over those in effect as of date of this contract to be for Charterer's account.
6. Freight rate, extras and demurrage to be paid at the rate of Worldscales One Hundred and Thirty (130) basis ~~Europe to Europe~~ in accordance with Worldscales rates in effect on loading date.
7. Charterers have the option to sublet all or any part of this contract remaining fully responsible for due fulfillment of all terms and conditions and if Charterers are obliged to sublet at any time it is agreed that Owners, if required by sublet Charterers, will change the loading and discharging ports to be one or more safe instead of one or two safe, although contract intention is to supply Spain including Canaries.
8. BUNKER CLAUSE  
If requested by Owners, Charterers to supply bunker fuel (max 3500 seconds Redwood Number 1) at discharge ports where bunkers can be made available at the rate Charterers can secure from Cepsa but with Cepsa's first refusal at ports where Cepsa's bunker facilities are available.
9. WAR CANCELLATION  
It is hereby mutually agreed that Charterers and/or Owners shall have the liberty to cancel this Charter Party should any major power become involved in a war with Liberia or each other. Major powers are defined as U.S.A., U.S.S.R., Great Britain, France, Japan, Peoples Republic of China and Spain.
10. All Spanish taxes on cargo and/or vessel by reason of having cargo on board to be for Charterer's account.

A 16 e

EXHIBIT B--GUARANTY ANNEXED TO AFFIDAVIT  
OF PATRICK V. MARTIN

COMPANIA ESPAÑOLA DE PETRÓLEOS, S.A.  
MADRID

ADDENDUM Nº 2

LETTER OF GUARANTY

NEREUS SHIPPING S.A.

In connection with the contract of affreightment, embodied in the Charter Party drawn up at New York and dated 27th January, 1971, between Nereus Shipping S.A. as Agents for Owners (hereinafter called the Owner), and Hidrocarburos y Derivados, C.A. (HIDECA) (hereinafter called the Charterer), being that the Charterer shall use the tonnage contracted under the present Charter Party for the transportation, during the period of three years commencing November 1971/January 1972, of crude oil under a OIL contract to be signed with Compañía Española de Petróleos, S.A. (CEPSA) vs. Compañía Española de Petróleos, S.A., hereby agree that, should HIDECA default in payment or performance of its obligations under the Charter Party, we will perform the balance of the contract and assume the rights and obligations of HIDECA on the same terms and conditions as contained in the Charter Party. Provided, however, that Compañía Española de Petróleos, S.A. shall not be responsible for any payments or charges as a result of HIDECA's default, prior to receiving written notice from the Owner advising us that HIDECA is in default, and calling upon us to assume performance of the Charter Party.

Madrid, 24th June, 1971

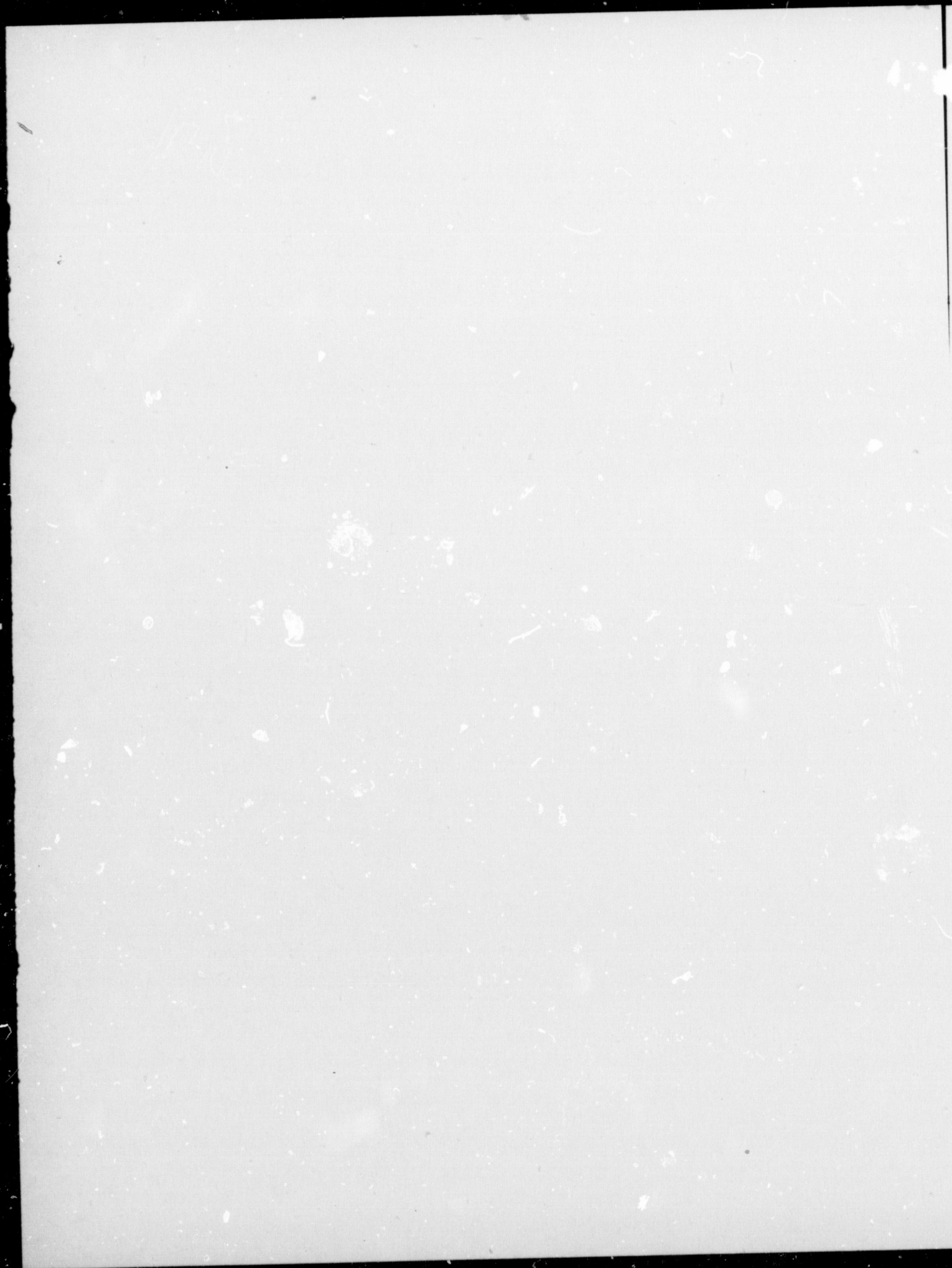


EXHIBIT C--NOTICE OF ARBITRATION (HIDECA TO NEREUS)  
ANNEXED TO AFFIDAVIT OF PATRICK V. MARTIN

BAKER & MCKENZIE

-----X  
:  
HIDROCARBUROS Y DERIVADOS, C.A., :  
:  
Claimant, :  
:  
-against- :  
:  
NEREUS SHIPPING, S.A., as Agent :  
for Owners, :  
:  
Respondent. :  
:  
-----X

NOTICE OF ARBITRATION

HIDROCARBUROS Y DERIVADOS, C.A. ("Hideca"), the Claimant, by its attorneys, Baker & McKenzie, hereby names, pursuant to the charter party dated January 27, 1971 between it and the Respondent, Nereus Shipping, S.A. ("Nereus"), calls for arbitration on the basis of the disputes hereinafter briefly described and hereby names as its arbitrator:

Professor Andreas F. Lowenfeld  
New York University School of Law  
40 Washington Square South  
New York, New York 10012  
United States of America

In accordance with paragraph 24, Part II of the charter party, there is set forth below a brief description of the disputes or differences which Hideca desires to put to arbitration.

1. Nereus committed a breach of the entire charter party.

*Exhibit C Annexed to Affidavit of Patrick V. Martin*

2. Nereus improperly withheld from Hideca a vessel which Nereus had nominated and Hideca had accepted.

3. Nereus improperly and wrongfully obtained a court order purporting to attach certain assets of Hideca.

4. Nereus improperly and wrongfully invoked the guarantee under the charter party by Compania Espanola de Petroleos, S.A.

Claimant requests an award setting forth damages as established and declaring that the charter party has been terminated by the actions of Nereus.

BAKER & Mc KENZIE

By: *James W. Kenzie*  
375 Park Avenue  
New York, New York 10022  
U.S.A.  
Telephone: (212) 751-5700

Dated: August 23, 1974  
New York, New York

A 19

EXHIBIT D--LETTER DATED SEPTEMBER 9, 1974 ANNEXED  
TO AFFIDAVIT OF PATRICK V. MARTIN

BURKE & PARSONS  
COUNSELORS AT LAW  
52 WALL STREET  
NEW YORK, N.Y. 10005

RECEIVED

SEP 10

DIOBY 4-1030

CABLE ADDRESS: AZ-HUTH

TELEX 222560

LAWRENCE W. NEWMAN

CONNECTICUT OFFICE

TAYLOR BUILDING

COS COS 0000

TEL 203-609-4111

RAYMOND J. BURKE  
J. LESTER PARSONS, JR.  
MAX TAYLOR  
THOMAS A. DILLON, JR.  
ALFRED A. MEYER  
J. LESTER PARSONS, III  
RAYMOND J. BURKE, JR.

September 9, 1974

Lawrence Walker Newman, Esq.  
Messrs. Baker & McKenzie  
375 Park Avenue  
New York, New York 10022

Re: Nereus Shipping, S.A.  
Hidrocarburos y Derivados, C.A.

Dear Sir:

I refer to our telephone conversations on August 23rd and your letter of that date enclosing a notice of arbitration. When I informed you that Nereus Shipping, S.A. ("Nereus") had previously demanded arbitration and named an arbitrator, you stated that you were unaware of any such communication.

To avoid any unnecessary issues and in response to your notice, on behalf of Nereus, we hereby appoint Mr. Lloyd C. Nelson, Orion & Global Chartering Co., Inc., 29 Broadway, New York, New York, telephone WH 3-7733 as an arbitrator.

Briefly stated, Nereus' claim will be based on material breaches by Hidrocarburos y Derivados, C.A. of the Charter Party, including, without limitation, default in paying demurrage and freights when due, declining nominations of vessels, refusing to pay insurance premiums for its account, and committing or causing a breach of the entire Charter Party.

Very truly yours,

BURKE & PARSONS

Raymond J. Burke

cc: Andreas F. Lowenfeld, Esq.  
Mr. Lloyd C. Nelson

A 20

EXHIBIT E--NOTICE OF ARBITRATION (NEREUS TO CEP SA)  
ANNEXED TO AFFIDAVIT OF PATRICK V. MARTIN

Sept. 3  
August , 1974

Compania Espanola De Petroleos, S.A.  
Av. de America 32  
Madrid, Spain

Re: Notice of Arbitration Pursuant  
to Charter Party dated  
27 January 1971

Nereus Shipping, S.A., acting by and through  
the undersigned, hereby gives you notice pursuant to  
the arbitration clause contained in Part II, paragraph  
24 of the Charter Party dated 27 January 1971 that it  
has appointed as an arbitrator Mr. Lloyd C. Nelson,  
c/o Orion and Global Chartering Co., Inc., 29 Broadway,  
New York, New York, U.S.A.

The dispute to be arbitrated involves the claim  
by Nereus Shipping, S.A. for damages in the amount of  
\$3,500,000.00, as near as can be presently ascertained  
arising from the wrongful repudiation by CEP SA of its  
obligations to perform the aforesaid Charter Party by  
shipping the balance of 367,240 long tons of cargo as  
provided therein. Annexed hereto as Appendix A is a  
copy of a telex message sent to CEP SA on August 22,  
1974 by the New York attorneys for Nereus Shipping, S.A.  
demanding arbitration, which demand shall be considered  
an integral part of this notice.

Very truly yours,

*A. S. M. J.*  
Antonio Gomez Arsolay

AFFIDAVIT OF SERVICE

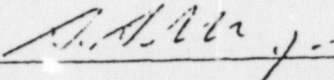
)  
(ss.:  
)

The undersigned, being duly sworn, deposes and  
says that he is over the age of twenty-one years; that he

A 21

Exhibit E Annexed to Affidavit of Patrick V. Martin

is an attorney duly licensed to practice law in Madrid;  
that on the 3<sup>rd</sup> day of August, 1974 he personally served  
a copy of the within notice of arbitration by leaving a  
true copy thereof with Mr. Juan Antonio Lopez, an officer  
of CEPSA, to wit, its J. General, at Av. de America 32,  
Madrid, Spain.

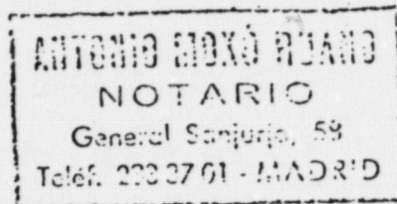
  
\_\_\_\_\_

Sworn to before me this  
day of August, 1974.

\_\_\_\_\_

A 22

EXHIBIT F--LETTER DATED SEPTEMBER 16, 1974 ANNEXED  
TO AFFIDAVIT OF PATRICK V. MARTIN



L2526436

14ª CLASE

===== ACTA PARA CERTIFICAR CARTA =====

===== NUMERO MIL TRESCIENTOS VEINTINUEVE =====

EN MADRID, a dieciseis de septiembre de mil nove  
cientos setenta y cuatro.-----

Ante mí, ANTONIO MOXO RUANO, Notario del Ilustre  
Colegio de esta capital, con residencia en la misma,--

===== COMPARECE =====

DON JOSE MARIA SAGAZ TEMPRANO, mayor de edad, ca  
sado, Abogado, vecino de Madrid, con domicilio en la-  
Avenida del Mediterráneo, número 52. Exhibe Documento  
Nacional de Identidad, número 25.850.760, expedido en  
esta capital el 29 de octubre de 1.970.-----

ACTUA en interés y por encargo de la "COMPAÑIA --



*Exhibit F Annexed to Affidavit of Patrick V. Martin*

ESPAÑOLA DE PETROLEOS, S.A." (CEPSA), sociedad domici-  
liada en Madrid, Avenida de América, 32, y a los fi-  
nes del requerimiento que se propone formular, me ha-  
ce entrega de una carta con fecha 16 de septiembre de  
1.974, suscrita por Don Juan A. Iliso Giner, como Di-  
rector General Adjunto de dicha sociedad y dirigida a  
Messrs. Burke & Parson, 52 Wall Street, New York, N.Y.  
10005, U.S.A.- Le entrega igualmente una copia o dupli-  
cado de dicha carta, así como un sobre con la misma di-  
rección del destinatario de ella.- - - - -

Y se requiere con el siguiente doble: - - - - -

===== OBJETO =====

PRIMERO.- Para que protocolice con este acta el -  
duplicado de la carta referida.- - - - -

SEGUNDO.- Para que me persone en una de las Ofici-  
nas de Correos de esta capital e imponga para su curso  
como correspondencia certificada, el original de la --

*Exhibit F Annexed to Affidavit of Patrick V. Martin*

carta mencionada, dentro del indicado sobre y dirigido al destinatario de la carta con las señas expresadas.-

Aceptado por mí el requerimiento y cumplimentando su primer extremo, protocolizo con este instrumento el duplicado de la carta de referencia y procedo al cotejo de éste con su original, encontrándolos conformes - por lo que doy fé de la exactitud del original con respecto a su duplicado.- - - - -

El resto del requerimiento será cumplimentado a la mayor brevedad y por diligencia a continuación.- - - -

Existe la presente acta que, a su elección, - leo al compareciente, después de advertirle de su derecho a leerla, encontrándola conforme, la aprueba y firma conmigo.- De todo lo cual, doy fe.- José M<sup>a</sup> Sagaz.- Signado: A. Moxó. Rubricados y sellado.-

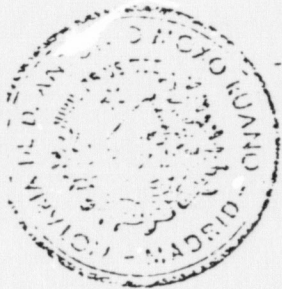
DILIGENCIA. - En Madrid, a dieciseis de septiembre de mil novecientos setenta y cuatro, cumplimentando el segundo extremo del requerimiento que se me

*Exhibit F Annexed to Affidavit of Patrick V. Martin*

hace en el acta que precede, me persono en una Oficina de Correos de esta capital y en la ventanilla correspondiente deposito para su curso como correspondencia certificada, la carta a que se refiere el acta precedente dentro de un sobre dirigido al destinatario de ella, Messrs. Burke & Parson, 52 Wall-Street, New York, N.Y. 10005, U.S.A., expidiéndoseme resguardo número 1.875.- De lo cual y de que con esta diligencia queda cerrado el presente instrumento y extendido en único pliego de clase decimocuarta, serie L., número dos millones quinientos veintiseis mil ciento treinta y nueve, yo, el Notario, doy fe.- Signado: A. Moxó. Rubricado y sellado.-- - - -

===== DOCUMENTO UNIDO =====

"COMPANIA ESPAÑOLA DE PETROLEOS, S.A.-MADRID-2.-COPIA-



*Exhibit F Annexed to Affidavit of Patrick V. Martin*

Messres. Burke & Parson.- 52 Wall Street.- New York,  
N.Y. 10005.- U.S.A.- - - - -

September 16, 1974.- Attn. Mr. Raymond J. Burke.-

Gentleman,- We refer to the notice dated September-  
3, 1974, served to us by Mr. Antonio Gomez Arboleya  
pursuant to which NEREUS SHIPPING, S.A. has nomina-  
ted Mr. Lloyd C. Nelson as an arbitrator under the-  
charter party dated January 27, 1971, between NEREUS  
and HIDROCARBUROS Y DERIVADOS, C.A. (HIDECA).- - -

We hereby reject said notice and will not nomina-  
te any arbitrator as demanded by NEREUS. CEPSA is -  
under no obligation to arbitrate any dispute with -  
NEREUS. NEREUS has not established that HIDECA has-  
defaulted under the charter.- - - - -

Further we have been advised that NEREUS and HI-  
DECA have each appointed arbitrators pursuant to --  
the terms of the charter party to determine their --

*Exhibit F Annexed to Affidavit of Patrick V. Martin*

respective rights and obligations. The obligations-  
of CEPESA are to be determined pursuant to the terms  
of the guaranty dated June 24, 1971 which does not-  
contain any arbitration clause.- - - - -

The foregoing was written without prejudice to -  
any rights and defenses of CEPESA under the terms of  
the guaranty and under any law that may be applica-  
ble thereto.- - - - -

We remind you that we have appointed the firm of  
POLES, TUBLIN, PATESTIDES AND STRATAKIS to repre- -  
sent our interests in connections with the foregoing  
matter and request that you direct all further commu-  
nications to them.- - - - -

Please be advised that this letter is being sent  
to you through the Notary Public of Madrid Mr. Anto-  
nio Moxó for proper evidence.- - - - -

Very truly yours,- COMPAÑIA ESPAÑOLA DE PETRO- -

*Exhibit F Annexed to Affidavit of Patrick V. Martin*

LEOS, S.A.- Firmado ilegible con rúbrica.- Juan A.-

Lliso Giner.- Director General Adjunto." - - - - -

ES COPIA FIEL DE SU MATRIZ, que libro a instancia de la "COMPAÑIA ESPAÑOLA DE PETROLEOS, S.A." (CEPSA), en dos pliegos de clase decimocuarta, serie L., números dos millones quinientos - - veintiseis mil cuatrocientos treinta y seis y dos millones quinientos veintiseis mil cuatrocientos treinta y nueve, - en Madrid a tres de Octubre de mil novecientos setenta y cuatro. - DOY FE.



*[Handwritten signature: Lliso Giner]*

EXHIBIT G--LETTER DATED OCTOBER 25, 1974 ANNEXED  
TO AFFIDAVIT OF PATRICK V. MARTIN

POLES, TUBLIN, PATESTIDES & STRATAKIS  
THIRTY SEVEN WALL STREET  
NEW YORK, NEW YORK 10005

October 25, 1974

JOHN G. POLES  
MELVIN J. TUBLIN  
MICHAEL PATESTIDES  
CHRIST STRATAKIS  
PATRICK V. MARTIN  
THEODORE P. DALY  
ALVIN L. STERN  
JOHN J. DEVINE, JR.  
FRANK R. MATERA  
ALAN VAN PRAAG

12121 944 0580  
CABLE ADDRESS "POTIDES"  
TELEX  
423974 PTPS UI  
PIRAEUS, GREECE  
5-7 FILELLINON STREET  
TELEPHONE: 452 0061, 9  
TELEX: 21-3295

Mr. Lloyd C. Nelson  
Orion & Global Chartering Co., Inc.  
29 Broadway  
New York, New York 10006

Mr. Manfred Arnold  
National Bank of North America  
44 Wall Street  
New York, New York 10005

Mr. Harry G. Webber  
119 Wickham Road  
Garden City, New York 11530

Re: Nereus Shipping/HIDECA  
Contract of Affreightment 1/27/71  
-----  
CEPSA GUARANTY 6/24/71

Gentlemen:

Please be advised that we have been retained by CEPSA in connection with the above matter. The undersigned has recently spoken with Lloyd Nelson concerning our retention as CEPSA had been advised of his appointment by Burke & Parsons, acting on behalf of Nereus in a purported arbitration between Nereus and CEPSA. We were advised by him that Mr. Arnold had been appointed by Burke & Parsons as an arbitrator for CEPSA as it refused to appoint an arbitration on the grounds that Nereus' demand was improper. Mr. Arnold and Mr. Nelson, in turn, appointed Mr. Webber as Chairman. This action by Burke & Parsons, on behalf of Nereus, has no authority under the aforementioned Contract of Affreightment and is without any basis in fact or law. Therefore, it is CEPSA's position that any award of this Panel would not be enforceable in any court and is completely without any legal foundation.

*Exhibit G Annexed to Affidavit of Patrick V. Martin*

Messrs. Lloyd C. Nelson  
Manfred Arnold  
Harry G. Webber

October 25, 1974

Page 2

The Contract of Affreightment is dated January 27, 1971 and is between Nereus and HIDECA. The Contract of Affreightment is based on the ESSOVOY, 1969, form of charter with certain additions and deletions as agreed upon between Nereus and HIDECA. There is a Letter of Guaranty dated at Madrid on June 24, 1971 by which CEPESA has guaranteed certain of HIDECA's obligations under the Contract of Affreightment.

Apparently certain disputes have arisen between HIDECA and Nereus. Pursuant to Clause 24 of the Charter, Nereus has appointed Mr. Nelson and HIDECA has appointed Professor Andreas F. Lowenfeld of the New York University School of Law as its Arbitrator. At the same time, Nereus sought to invoke arbitration under the same Contract of Affreightment against CEPESA and appointed Mr. Nelson as its Arbitrator, CEPESA rejected this improper demand and by letter dated September 16, 1974 so advised Burke & Parsons. For your records, we enclose herewith a copy of the Demand served on CEPESA and its reply thereto. We also enclose a copy of the Contract of Affreightment dated January 27, 1971 and the Guaranty dated June 24, 1971.

We, therefore, request that you take no further action in this matter until such time as there has been a determination as to your legal capacity.

We are seeking instructions from our client and will revert to you in due course.

Very truly yours,

POLES, TUBLIN, PATESTIDES & STRATAKIS

*Patrick V. Martin*  
Patrick V. Martin

PVM/mg  
cc: Baker & McKenzie  
Professor Lowenfeld  
Burke & Parsons

A 31

EXHIBIT H--LETTER DATED NOVEMBER 21, 1974 ANNEXED  
TO AFFIDAVIT OF PATRICK V. MARTIN

BURKE & PARSONS  
COUNSELORS AT LAW  
52 WALL STREET  
NEW YORK, N.Y. 10005

RAYMOND J. BURKE  
J. LESTER PARSONS, JR.  
MAX TAYLOR  
THOMAS A. DILLON, JR.  
ALFRED A. MEYER  
J. LESTER PARSONS, III  
RAYMOND J. BURKE, JR.

DIGBY # 1030  
CABLE ADDRESS AZMUTH  
TELEX 222560  
CONNECTICUT OFFICE  
TAYLOR BUILDING  
COS COS 06807  
TEL 203 659-4211

November 4, 1974

Messrs. Poles, Tublin, Patestides  
& Stratakis  
37 Wall Street  
New York, New York 10005

RECEIVED  
NOV 4 1974

Attention: Mr. Patrick V. Martin

POLES, TUBLIN  
PATESTIDES & STRATAKIS

Re: Arbitration Between  
Nereus Shipping, S.A.  
and Compania Espanola  
De Petroleos, S.A. (CEPSA)  
under Charter Party Dated  
January 27, 1971  
Our Ref. No. 12-529-2

Dear Sir:

On August 22, 1974, as attorneys for Nereus Shipping S.A., we sent a telex message to CEPSA pursuant to the arbitration clause (i.e. Part II, paragraph 24) of the above mentioned Charter Party demanding arbitration and naming Mr. Lloyd C. Nelson of Orion and Global Chartering Co. Inc. as the arbitrator appointed by Nereus.

Thereafter pursuant to paragraph 24 of the Charter Party, on September 3, 1974, Antonio Gomez Arboleya, Esq. personally served upon an officer of CEPSA at its office in Madrid a notice and demand for arbitration naming Mr. Nelson as the arbitrator appointed by Nereus and describing the existing dispute between the parties. By letter to us dated September 16, 1974, CEPSA advised us that they would not name an arbitrator and requested us to direct all further communications to you as their attorneys.

The arbitration clause of the Charter Party provides that "if the other party shall not, by notice

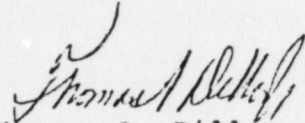
2.

served upon the first moving party within twenty days" name an arbitrator, the moving party has the right to appoint a second disinterested arbitrator with the same force and effect as if named by the other party. Acting in accordance with the provisions of the Charter Party, Nereus named Mr. Manfred W. Arnold of National Bank of North America as the second arbitrator. Mr. Nelson and Mr. Arnold appointed Mr. Harry G. Webber of Frances A. Martin & Ottaway Inc. to act as the third arbitrator.

The Arbitration Panel has now scheduled the first hearing in this dispute for November 21, 1974 at 5:00 PM at our office.

Very truly yours,

BURKE & PARSONS



Thomas A. Dillon, Jr.

TAD, JR.:se

AFFIDAVIT OF THOMAS A. DILLON, JR. IN OPPOSITION TO  
ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff,

-against-

NEREUS SHIPPING, S.A.,

Defendant.

74 Civ. 5102 (CES)

AFFIDAVIT IN  
OPPOSITION TO  
PLAINTIFF'S  
MOTION FOR A  
PRELIMINARY  
INJUNCTION

----- x

THOMAS A. DILLON, JR., being duly sworn, deposes  
and says:

1. I am an attorney duly admitted to practice  
before this Honorable Court and a member of the firm of  
Burke & Parsons, attorneys for the Defendant, and am familiar  
with all proceedings heretofore had herein.

2. This affidavit is submitted in opposition to  
the motion of Plaintiff, which was brought on by order to show  
cause dated November 21, 1974, for a preliminary injunction  
restraining Defendant from proceeding with an arbitration  
against Plaintiff pursuant to the arbitration clause of a  
Contract of Affreightment dated January 27, 1971 between  
Plaintiff and Defendant (hereinafter referred to as the  
"Charter").

3. The Charter, a true copy of which is annexed  
hereto and made a part hereof as Exhibit 1, provided for the

*Affidavit of Thomas A. Dillon, Jr.*

carriage between ports specified therein of a total of 1,800,000 long tons of cargo, 10% more or less at Owner's (i.e. Defendant's) option over a three (3) year period commencing between November 15, 1971 and January 15, 1972. Typewritten clause 1 of the Charter provided as follows:

"This Contract of Affreightment will remain in full force and effect for a total quantity of 600,000 long tons ten (10) percent more or less per year at Owner's option fairly evenly spread for a period of three (3) years."

4. The three year period of the Charter commenced on December 24, 1971, when the first Vessel tendered to load the first cargo under the Charter. Prior to the refusal of Plaintiff to perform its obligations under the Charter as hereinafter more fully stated, the total quantity carried under the Charter was 1,330,030 long tons, and the quantity carried thus far in the last year of the Charter, which will expire on December 24, 1974, is 209,751 long tons.

5. Paragraph K of Part I of the Charter states that the place of arbitration proceedings is to be New York and paragraph 24 of Part II of the Charter entitled "Arbitration" provides in part as follows:

"Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York.

\* \* \*

"Until such time as the arbitrators finally close the hearings either party shall have the

right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance, for attorney's fees, and judgment may be entered upon any award made hereunder in any Court having jurisdiction in the premises."

An arbitration panel has been appointed pursuant to the terms of the Arbitration clause, as hereinafter explained in detail, and the first arbitration hearing was scheduled to be held on November 21, 1974 as stated in your deponent's letter to Plaintiff's attorney dated November 4, 1974 (Exhibit H to Plaintiff's Moving Papers) until restrained by the Order to Show Cause dated November 21, 1974.

6. The entire Charter (Exhibit 1 hereto) consists of a printed form of Essovoy 1969 Charter with 10 typewritten clauses, together with three Addenda to the Charter designated respectively "Addendum No. 1", "Addendum No. 2" and "Addendum No. 3". The printed form of the Charter indicated that it was between Defendant and Hidrocarburos y Derivados, C.A. (HIDECA) (hereinafter referred to as "Hideca"). However, Addendum No. 2 of the Charter, which was signed by Plaintiff, provided as follows:

"In connection with the contract of affreightment, embodied in the Charter Party drawn up at New York and dated 27th January, 1971, between Nereus Shipping S.A. as Agents for Owners (hereinafter called the Owner), and Hidrocarburos y Derivados, C.A. (HIDECA) (hereinafter called the Charterer), being that the Charterer shall use the tonnage contracted under the present Charter Party for the

transportation, during the period of three years commencing November 1971/January 1972, of crude oil under a CIF contract to be signed with Compania Espanola de Petroleos, S.A. (CEPSA) we, Compania Espanola de Petroleos, S.A., hereby agree that, should HIDECA default in payment or performance of its obligations under the Charter Party, we will perform the balance of the contract and assume the rights and obligations of HIDECA on the same terms and conditions as contained in the Charter Party. Provided, however, that Compania Espanola de Petroleos, S.A. shall not be responsible for any payments or damages as a result of HIDECA's default, prior to receiving written notice from the Owner advising us that HIDECA is in default, and calling upon us to assume performance of the Charter Party."

7. Hideca by July 24, 1974 had committed several material breaches of the Charter and was in default in the payment of freight, demurrage, expenses and extra insurance premiums required to be paid under the Charter by the Charterer in an amount of \$1,236,845.67. In addition, Hideca had refused to accept the nomination by Defendant of the tanker vessel TROPIC to perform the eighteenth voyage under the Charter. As a result, pursuant to Addendum No. 2 of the Charter quoted above, Defendant on July 24, 1974 sent a telex to Plaintiff (a true copy of which is annexed hereto and made a part hereof as Exhibit 2) stating, in part, as follows:

"Owner refers to letter of guarantee in his favor given by Cepsa made and dated 24 June 1971 at Madrid by the terms of which Cepsa agreed that should Hideca default for payment or performance of its obligations under the contract of affreightment dated 27 January 1971 (Charter Party) Cepsa, upon notice from Owner, would perform the balance of the Charter Party and assume the rights and obligations of Hideca on the same terms and conditions as contained in the Charter Party. Owner hereby gives Cepsa notice under said letter of guarantee that Hideca is in default under the Charter

*Affidavit of Thomas A. Dillon, Jr.*

Party and calls upon Cepsa to perform the balance of the Charter Party."

8. Thereafter, on July 26, 1974, Defendant filed a complaint in this Honorable Court and obtained an order of attachment directed against the property of Hideca in order to obtain jurisdiction over Hideca and security for its claims for freight, demurrage, expenses and extra insurance premiums due under the Charter as a result of Hideca's default thereunder and to secure Defendant's claim for damages by reason of the rejection by Hideca of the S.T. TROPIC. Annexed hereto and made a part hereof as Exhibit 3 are true copies of the order of attachment, and supporting affidavits dated July 26, 1974 of Demetrios Xistris and Raymond J. Burke, Jr., together with the complaint.

9. The affidavit dated July 26, 1974 of Mr. Demetrios Xistris, president of Defendant's local agent (included as part of Exhibit 3) itemized in paragraphs 4 through 8 sums in the total amount of \$1,236,845.67, which were due and payable by Charterer under the Charter, but which had not been paid by Hideca. These sums included long overdue items for (i) \$15,000 and \$68,529.18 from the fourteenth (14th) voyage which ended on February 23, 1973, (ii) \$30,032.26 and \$143,355.47 from the fifteenth (15th) voyage, which ended on March 16, 1973 and (iii) \$3,930.36 and \$143,797.20 from the sixteenth (16th) voyage which ended on April 10, 1973.

10. Defendant was unable to locate assets of Hideca in the United States and in this District and as a result no property was attached under the Order of Attachment dated July 26, 1974. However, by affidavit dated November 25, 1974, Mr. Xistris has confirmed that all of the items in the amount of \$1,236,845.67 remain unpaid as of this date. A copy of said affidavit is annexed hereto and made a part hereof as Exhibit 4. As a result, Hideca was in default under the Charter on July 26, 1974 and such default has continued to the present date.

11. On August 2, 1974, Defendant through the chartering broker sent a telex message to Plaintiff nominating the MAJESTIC as the eighteenth (18th) Vessel to perform under the Charter (a true copy of which is annexed hereto as Exhibit 5) stating as follows:

"We have been advised by Nereus Shipping S.A. that under its guarantee with respect to the Hideca COA dated January 27, 1971 that due to the default of Hideca, Nereus has exercised its rights under the guarantee and has called upon you to perform the balance of the COA. Accordingly on behalf of Nereus we hereby give you thirty days notice of a definite nomination of the "MAJESTIC" E.T.A. P.G. September 7th, 1974."

12. On August 6, 1974, Plaintiff rejected Defendant's nomination of the MAJESTIC and on August 9, 1974 sent to Defendant a telex message (a true copy of which is annexed hereto as Exhibit 6) stating as follows:

"We have received from Longtanker NYK a telex

dated August 2, 1974 by which such firm on behalf of Nereus thereby gives Cepsa thirty days notice of a definitive nomination of the MAJESTIC ETA PG September 7th. Since it is far from clear to us that you have properly invoked the guarantee before we respond to the aforesaid nomination we must receive from you adequate assurance that you will hold us harmless from any damages or losses we may incur as a result of accepting that nomination in the event that you have improperly invoked the guarantee and we are not obliged to perform Hideca's obligations under the said contract of affreightment. Please advise us as to what guarantee you will provide protecting us against such damages and losses."

13. After several exchanges of telex messages concerning Plaintiff's request quoted above for a guaranty to be furnished by Defendant in which Defendant pointed out that no such guaranty was required under the terms of Addendum No. 2 to the Charter, on August 16, 1974 Defendant advised Plaintiff as follows:

"Nereus is agreeable to furnish you with a bank guarantee to be issued by a European branch of First National City Bank or its correspondent Bank. With respect to details of execution Mr. Raymond J. Burke will be arriving Monday August 19th at Madrid via TWA Flight 904 at 0800 hours and he will contact you on arrival."

14. Following the meeting in Spain referred to in the message quoted above, Plaintiff refused to perform the balance of the Charter as required by Addendum No. 2 thereof despite the fact that Defendant offered a bank guaranty to secure Plaintiff with respect to any possible damages by reason of such performance. Thereafter Mr. Raymond J. Burke, as attorney for Defendant, sent a telex dated August 22,

1974 to Plaintiff (a true copy of which is annexed hereto as Exhibit 7) stating, in part as follows:

"In the presence of Messrs. Pardo, Miret, Briggs and the writer, Mr. Assens confirmed at the meeting on Wednesday morning that Cepsa had agreed on Tuesday to perform the balance of the Charter Party and furnish cargoes in the aggregate amount of 367,240 long tons of cargo. However, after apologizing, Mr. Assens said Cepsa's decision as of Wednesday morning was to refuse to ship any cargo under the Charter Party since Cepsa did not know whether Hideca was or was not in default under the Charter Party.

\* \* \*

"By virtue of Addendum No. 2 of the Charter Party, Cepsa is a party to that Charter with the obligation to perform following notice in accordance with its terms. Cepsa was and is a party to the Charter Party and by Addendum No. 2 clearly agreed to be substituted in the place of Hideca for the balance thereof. Since Cepsa now has refused to perform the balance of the Charter Party, this matter must now be resolved by arbitration as provided in the Charter Party. Accordingly on behalf of Nereus, we hereby put Cepsa on notice that its refusal to accept the nomination of the MAJESTIC and ATHENIC and its assertion that it will not perform the balance of the Charter Party constitute a material breach of the Charter Party for which Nereus will hold it liable in damages at Three and One-Half Million Dollars as near as can be presently ascertained. Nereus further demands arbitration with Cepsa under the Charter Party and hereby nominates Mr. Lloyd C. Nelson, Orion and Global Chartering Co. Inc., 29 Broadway, New York, New York USA as arbitrator."

15. Thereafter, on August 30, 1974 (i.e. eight (8) days later) Plaintiff replied to Mr. Burke by telex (a true copy of which is annexed hereto as Exhibit 8) stating, in part, as follows:

"We have been advised by Hideca that they are not in default and therefore Nereus has no right

to demand performance of the COA from us. In view of your dispute with Hideca you must first obtain a judgment in your favor before seeking to enforce guaranty."

15. On September 3, 1974, Defendant acting by and through its Spanish attorney, Mr. Antonio Gomez Arboleya, personally served Plaintiff in Spain with a demand for arbitration under the Charter as amended by Addendum No. 2, which had annexed thereto as an appendix a copy of Exhibit 8, and which confirmed the appointment of Mr. Lloyd C. Nelson, as an arbitrator. This service was upon an officer of Plaintiff as provided in the Arbitration clause of the Charter. On September 16, 1974, Plaintiff sent a letter to attorneys for Defendant (a true copy of which is annexed hereto and made a part hereof as Exhibit 9) stating, in part, as follows:

"We refer to the notice dated September 3, 1974, served to us by Mr. Antonio Gomez Arboleya pursuant to which NEREUS SHIPPING, S.A. has nominated Mr. Lloyd C. Nelson as an arbitrator under the charter party dated January 27, 1971, between NEREUS and HIDROCARBUROS Y DERIVADOS, C.A. (HIDECA).

We hereby reject said notice and will not nominate any arbitrator as demanded by NEREUS. CEPESA is under no obligation to arbitrate any dispute with NEREUS. NEREUS has not established that HIDECA has defaulted under the charter."

16. The Arbitration clause of the Charter (Clause 24) provides, in part, as follows:

"If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the

right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator has been appointed by the other party."

Since Plaintiff refused to appoint an arbitrator under the Charter, Defendant in accordance with the provisions quoted above appointed Mr. Manfred Arnold, an officer of the Commercial Bank of North America, a bank with which Defendant has no business, as the second arbitrator, and the two appointed Mr. Harry Webber as the third arbitrator.

17. Thereafter, the arbitrators scheduled the first arbitration hearing for November 21, 1974 and your deponent advised Plaintiff's attorneys of the hearing by letter dated November 4, 1974 which was served by hand on that date (a true copy of which is annexed hereto and made a part hereof as Exhibit 10). Despite the fact that Plaintiff had notice of the appointment of the Arbitration Panel and of the hearing date, Plaintiff waited seventeen (17) days before moving for an injunction by instituting this action for a declaratory judgment.

18. Addendum No. 2 to the Charter (Exhibit 1), which was signed by Plaintiff, states that the Vessels furnished by Defendant would be used as follows:

" \* \* \* for the transportation, during the period of three years commencing November 1971/January 1972 of crude oil under a CIF contract to be signed with Compania Espanola de Petroleos, S.A. (CEPSA) \* \* \* ".

*Affidavit of Thomas A. Dillon, Jr.*

19. Since the Vessels would be carrying Plaintiff's cargo, it followed that Plaintiff wished to be certain that Defendant would not terminate the Charter by reason of a material breach thereof by Hideca. Consequently Plaintiff agreed by the terms of Addendum No. 2 of the Charter as follows:

" \* \* \* should HIDECA default in payment or performance of its obligations under the Charter Party, we will perform the balance of the contract and assume the rights and obligations of HIDECA on the same terms and conditions as contained in the Charter Party. \* \* \* "

20. Plaintiff's Supporting Affidavit disregards the broad language of Addendum No. 2 to the Charter, under which Plaintiff was to "perform the balance of the contract and assume the rights and obligations of Hideca on the same terms and conditions as contained in the Charter Party," and erroneously states in paragraph 3 as follows:

" \* \* \* it (i.e. Plaintiff) agreed to guarantee certain of Hideca's obligations under the COA."  
(Emphasis added)

21. Plaintiff has also erroneously characterized what is Addendum No. 2 to the Charter (which contains the broad arbitration clause quoted above) as a "Guaranty" of collection of a judgment against Hideca. In this regard, Plaintiff stated in its telex dated August 30, 1974 (Exhibit 8 quoted in part in paragraph 15 above) "you must first obtain

a judgment in your favor (i.e. against Hideca) before seeking to enforce guaranty."

22. Plaintiff's contentions are contradicted by (i) the designation of its guaranty of performance as an addendum to the Charter, (ii) the language of Addendum No. 2 quoted above in paragraph 19 hereof and (iii) the final sentence of Addendum No. 2 which provided as follows:

"Provided, however, that Compania Espanola de Petroleos, S.A. shall not be responsible for any payments or damages as a result of HIDECA's default, prior to receiving written notice from the Owner advising us that HIDECA is in default, and calling upon us to assume performance of the Charter Party."

23. In its Moving Papers, Plaintiff has suggested that because Defendant and Hideca have appointed arbitrators in their dispute (i.e. involving Hideca's defaults up to July 24, 1974), Plaintiff need not perform the balance of the Charter after that date. However, it is clear from the last sentence of Addendum No. 2 that Defendant must seek recovery of the \$1,236,845.67 referred to in paragraphs 9 and 10 above from Hideca, some items of which have remained unpaid since February 1973. Defendant's claims against Hideca and arbitration to obtain an award which can be reduced to judgment for such sums, is no bar to Defendant's claims against Plaintiff for its failure to perform the balance of the Charter after July 24, 1974. These claims of Defendant must

be arbitrated under the arbitration clause of the Charter as amended by Addendum No. 2.

24. Defendant's claims to be arbitrated with Plaintiff are based on the failure of Plaintiff to perform the balance of the Charter, which required the shipment of 660,000 long tons of cargo (i.e. 600,000 plus 10%) during the calendar year from December 24, 1973 to December 24, 1974. Only 209,751 long tons of cargo were shipped by Hideca, which did not even pay freight of \$770,424.17 for the last cargo delivered on July 12, 1974 (as set forth in the affidavit of Mr. Xistris, Exhibit 4 hereto). Consequently Plaintiff was required by the terms of Addendum No. 2 to the Charter to perform the balance of the Charter by shipping 450,249 long tons of cargo, which it has refused to do.

25. The freight rate provided in paragraph F of Part I of the Charter was Worldscale 130 which is equivalent to \$13.27 per ton. While this freight rate was low until the Arab oil embargo in October of 1973, the present market rate is approximately Worldscale 40, which is equivalent to \$4.84 per ton.

26. As a result of the drop in the world freight rates, Plaintiff by refusing to perform the balance of the Charter as provided in Addendum No. 2, and by refusing to

arbitrate with Defendant as required by the Charter, is wrongfully profiting the extent of \$8.43 per ton for the carriage of each ton of its cargo referred to in Addendum No. 2 and paragraph 18 above and Defendant is being damaged to the extent of \$3,794,599.07.

27. The following facts are undisputed in the proceedings before this Honorable Court:

a) Addendum No. 2 to the Charter was signed by Plaintiff.

b) The Charter contains a New York arbitration clause.

c) Defendant on July 24, 1974 invoked the provisions of Addendum No. 2 of the Charter and called upon Plaintiff to "perform the balance of the contract and assume the rights and obligations of Hideca on the same terms and conditions of the Charter Party."

d) Plaintiff has refused to perform the balance of the Charter and no shipments have been made since July 12, 1974 and the freight market is greatly below the rate provided in the Charter of Worldscale 130.

e) Hideca has not paid the sum of \$1,236,845.67 under the Charter for which Defendant obtained an order of attachment on July 26, 1974.

f) Only 209,751 tons of cargo have been shipped

during the last year of the Charter which will end on December 24, 1974.

28. For the reasons stated herein and based on the exhibits annexed hereto and the legal authorities cited in Defendant's accompanying Brief in Opposition To Plaintiff's Motion, deponent respectfully prays that this Honorable Court enter an order denying Plaintiff's motion for an injunction restraining arbitration between Plaintiff and Defendant under the Charter as amended by Addendum No. 2.

---

Thomas A. Dillon, Jr.

Sworn to before me this  
25th day of November, 1974.

---

A 48

EXHIBIT 1--CHARTER ANNEXED TO AFFIDAVIT  
OF THOMAS A. DILLON, JR.

*Long, Quinn & Boylan Co., Inc.*

375 PARK AVENUE  
NEW YORK, N.Y. 10022

TELEPHONE  
(212) PLAZA 1-4550

S. A. LONG  
J. R. QUINN  
JOHN J. BOYLAN  
JOSEPH J. McALEER

CABLE ADDRESS  
"LONGTANKER"

TELEX RCA 224109  
ITT 420327  
W.U. 62538  
FRENCH 82567  
TWX 710-581-3693

December 10, 1971

ADDENDUM NUMBER THREE

Referring to the Charter Party dated 27 January 1971, New York, N.Y.  
by and between NEREUS SHIPPING S.A. PIRAEUS, GREECE, as agents for the  
Owners, and HIDROCARBUROS Y DERIVADOS C.A. (HIDECA), Charterers, cov-  
ering the transportation of petroleum products over a period of three  
(3) years --

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED THAT:

Clause "G" of the Charter Party shall be altered to the effect that  
Freight shall be payable in U.S. Dollars to:

First National City Bank  
34 Moorgate, London, EC2, England  
For credit to: Nereus Shipping S.A.  
United States Dollar External  
Account Number 902-40-3

All other terms, conditions and exceptions shall remain unaltered.


Witness the signature of:

*[Signature]*

NEREUS SHIPPING S.A., PIRAEUS, GREECE

By: *[Signature]* CN

Witness the signature of:

*[Signature]*  
*Thomas A. Dillon*  


HIDROCARBUROS Y DERIVADOS. C.A. (HIDECA)

By: *[Signature]*

*[Signature]*  
  
Ministre  
des Affaires Etrangeres  
وزارة الشؤون الخارجية

بد النايق الشافعي  
Abdellatif CHAFAI

A 49

Exhibit 1 Annexed to Affidavit of Thomas A. Dillon, Jr.

COMPANIA ESPAÑOLA DE PETRÓLEOS. S. A  
MADRID

ADDENDUM Nº 2

LETTER OF GUARANTY

NEREUS SHIPPING S.A.

Pireaus

In connection with the contract of affreightment, embodied in the Charter Party drawn up at New York and dated 27th January, 1971, between Nereus Shipping S.A. as Agents for Owners (hereinafter called the Owner), and Hidrocarburos y Derivados, C.A. (HIDECA) (hereinafter called the Charterer), being that the Charterer shall use the tonnage contracted under the present Charter Party for the transportation, during the period of three years commencing November 1971/January 1972, of crude oil under a CIF contract to be signed with Compañía Española de Petróleos, S.A. (CEPSA) we, Compañía Española de Petróleos, S.A., hereby agree that, should HIDECA default in payment or performance of its obligations under the Charter Party, we will perform the balance of the contract and assume the rights and obligations of HIDECA on the same terms and conditions as contained in the Charter Party. Provided, however, that Compañía Española de Petróleos, S.A. shall not be responsible for any payments or damages as a result of HIDECA's default, prior to receiving written notice from the Owner advising us that HIDECA is in default, and calling upon us to assume performance of the Charter Party.

Madrid, 24th June 1971

Don Juan L. Moreno  
Managing Director. - CepSA



عبد اللطيف الشافعي  
Abdellatif CHAFAI



ADDENDUM No 1

- 1.- If any of the vessels nominated by the Owner are capable of transitting the Suez Canal in ballast and/or fully loaded, (and safe navigation for the sizes and construction of vessel (s) nominated under this contract as confirmed by the Suez Canal Authorities and it becomes usual for such size and construction of vessel (s) to pass through the Suez Canal ~~both~~ fully laden or in ballast as the case may be. Such transit of the Canal must be fully approved by vessels underwriters prior to such transit) Owners agree to accept the Suez rate or Suez/Suez or the Cape/Cape rate, whichever is lower, for the applicable portion where the vessel could have transitted the Canal.
- 2 For purposes of the above clause when Suez is open, Owners agree that TWENTY PER CENT (20%) of the quantity carried under the contract will be in vessels suitable for Suez transit if vessels of SIXTY FIVE THOUSAND DWT (65,000 DWT) or larger are capable of going through in ballast and/or fully loaded, safely as defined above, or if the Owners do not nominate these sizes, they will accept, the Suez/Suez <sup>1972</sup> or ~~Suez/Suez~~ rate as applicable, for TWENTY PER CENT (20%) of the contract carried. <sup>1972</sup> This adjustment on the freight, if any, is to be done at the end of the contract, basis the pro rata share of the annual movement which could move via Suez after the date the Canal becomes navigable as defined above.
- 3.- In all circumstances, however, Owners retain their right to route the vessel (s) nominated under this contract whatever way they consider safest and/or desireable irrespective of on what basis Charterers are paying freight.
- 4.- For purposes of determining whether the Suez Canal is open or closed for any particular voyage, the time of tendering notice of readiness at loading port for each voyage shall apply.

② HOWEVER, IF THE 65,000 DWT IS NOT CAPABLE OF TRANSITTING IN BALLAST AND LOADED THEN THE RATE IS BASED ON PARAGRAPH 1. ~~the Suez Canal~~

A 51

Exhibit 1 Annexed to Affidavit of Thomas A. Dillon, Jr.

EIN-11708

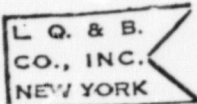
ESSO INTERNATIONAL INC.  
SUPPLY AND TRANSPORTATION DEPARTMENT

CODE WORD FOR THIS  
CHARTER PARTY:

ESSOVOY  
1969

ORIGINAL

# TANKER VOYAGE CHARTER PARTY



## PREAMBLE

New York, N.Y. 27 January 1971  
Place Date

IT IS THIS DAY AGREED between Pireaus, Greece  
NEREUS SHIPPING S.A. as Agents for

~~XXXXXX~~ owner (hereinafter called the "Owner") of the vessel per nomination

SS/MS vessel per nomination (hereinafter called the "Vessel")

and HIDROCARBUROS Y DERIVADOS C.A. (HIDECA) (hereinafter called the "Charterer")  
Apartado 59021, Caracas, Venezuela

that the transportation herein provided for will be performed subject to the terms and conditions of this Charter Party, which includes this Preamble and  
Part I and Part II. In the event of a conflict, the provisions of Part I will prevail over those contained in Part II.

## PART I

A. Description and Position of Vessel: (See Clause Two)

Deadweight: as per nomination  
tons (2240 lbs.)

Classed:

Loaded draft of Vessel on assigned summer freeboard as per ft. nomination  
in. in salt water.

Capacity for cargo: tons (of 2240 lbs. each) % more or less, Vessel's option. (See Clause Two)

Coated: ☐ Yes ☒ No

Coiled: ☒ Yes ☐ No

Last two cargoes: Crude and/or Dirty Petroleum Products  
and/or harmless dry bulk commodities

Now: Trading or Newbuilding

Expected Ready:

B. Laydays:

Commencing: 15 November 1971

Cancelling: 15 January 1972

C. Loading Port(s): One (1) or two (2) safe ports Persian Gulf excluding Fao and Abadan

Charterer's Option

D. Discharging Port(s): One (1) or two (2) safe ports United Kingdom or Continent, Gibraltar Harbors  
Range, option Scandinavia within Institute Warranties Limits or one (1) or  
two (2) safe ports Mediterranean excluding Israel and Egypt option Canaries  
Islands but always excluding all Communist or Communist controlled countries.

## Exhibit 1 Annexed to Affidavit of Thomas A. Dillon, Jr.

Cargo: Crude and/or Dirty Petroleum Products maximum two grades in accordance with each vessel's natural segregation maximum heat 135 degrees F. all cargoes will be restricted to a maximum API gravity of 36 at 60 degrees F. Charterer's Option

Freight Rate: Worldscale One Hundred and Thirty (WS 130) (See Clause Six) per ton (of 2240 lbs. each).

Freight Payable to: Nereus Shipping S.A., Account 04214233 with at First National City Bank, Two Broadway, New York or assigns in U.S. Dollars

Total Laytime in Running Hours: 72 hours weather working excluding Sundays and holidays unless used.

Demurrage per day: Per the Worldscale allowance based upon the nominated vessel's deadweight plus thirty (30) percent.

Commission of 3 % is payable by Owner to Long, Quinn & Boylan Co., Inc. for division with others which includes two (2) percent address commission on the actual amount of freight, when and as freight is paid.

The place of General Average and arbitration proceedings to be ~~London~~ New York (strike out one).

at Owner's expense

Tovalop: Owner warrants vessel to be a member of TOVALOP scheme and will be so maintained ~~XXXXXXXXXXXXXXXXXXXX~~

However Owners cannot make such warranty for vessels not under their effective management.

Special Provisions:

IN WITNESS WHEREOF, the parties have caused this Charter, consisting of a Preamble, Parts I and II, to be executed in duplicate as of day and year first above written.

Witness the signature of:

*[Signature]*

Witness the signature of:

*[Signature]*

NEREUS SHIPPING, S.A., AS AGENTS FOR

By:

*[Signature]* OWNERS *CA*  
P. G. CAROUSSO - PRESIDENT

By:

*[Signature]* HIDROCARBUROS Y DERIVADOS, C. A.

By: Emilio González Romero.

## Exhibit 1 Annexed to Affidavit of Thomas A. Dillon, Jr.

## PART II

1. **WARRANTY VOYAGE-CARGO.** The vessel, classed as specified in Part I hereof, and to be so maintained during the currency of this Charter, shall, with all convenient dispatch, proceed as ordered to Loading Port(s) named in accordance with Clause 4 hereof, or so near thereto as she may safely get (always afloat), and being seaworthy, and having all pipes, pumps and heater coils in good working order, and being in every respect fitted for the voyage, so far as the foregoing conditions can be attained by the exercise of due diligence, perils of the sea and any other cause of whatsoever kind beyond the Owner's and/or Master's control excepted, shall load (always afloat) from the factors of the Charterer a full and complete cargo of petroleum and/or its products in bulk, not exceeding what she can reasonably stow and carry over and above her bunker fuel, consumable stores, boiler feed, culinary and drinking water, and complement and their effects (sufficient space to be left in the tanks to provide for the expansion of the cargo), and being so loaded shall forthwith proceed, as ordered on signing Bills of Lading, direct to the Discharging Port(s), or so near thereto as she may safely get (always afloat), and deliver said cargo. If heeling of the cargo is requested by the Charterer, the Owner shall exercise due diligence to maintain the temperatures requested.

2. **FRIGHT.** Freight shall be at the rate stipulated in Part I and shall be computed on intake quantity (except d-draught as per Clause 3) as shown on the Inspector's Certificate of Inspection. Payment of freight shall be made by Charterer without discount upon delivery of cargo at destination, less any disbursements or advances made to the Master or Owner's agents at ports of loading and/or discharge and cost of insurance thereon. No deduction of freight shall be made for water and/or sediment contained in the cargo. The services of the Petroleum Inspector shall be arranged and paid for by the Charterer who shall furnish the Owner with a copy of the Inspector's Certificate.

3. **DEADWRIGHT.** Should the Charterer fail to supply a full cargo, the Vessel may, at the Master's option, and shall, upon request of the Charterer, proceed on her voyage, provided that the tanks in which cargo is loaded are sufficiently filled to put her in seaworthy condition. In that event, however, deadweight shall be paid at the rate specified in Part I hereof on the difference between the intake quantity and the quantity the Vessel would have carried if loaded to her minimum permissible freeboard for the voyage.

#### 4. NAMING LOADING AND DISCHARGE PORTS.

(a) The Charterer shall name the loading port or ports at least twenty-four (24) hours prior to the Vessel's readiness to sail from the last previous port of discharge, or from bunkering port for the voyage, or upon signing this Charter if the Vessel has already sailed. However, Charterer shall have the option of ordering the Vessel to the following destinations for wireless orders:

ST. KITTS  
PORT SAID  
On a voyage to a port or ports in:  
Caribbean or U.S. Gulf loading port(s)  
Eastern Mediterranean or Persian Gulf loading port(s)  
(from ports west of Port Said.)

(b) If lawful and consistent with Part I and with the Bills of Lading, the Charterer shall have the option of nominating a discharging port or ports by radio to the Master on or before the Vessel's arrival at or off the following places:

Place  
LAND'S END  
On a voyage to a port or ports in:  
United Kingdom/Continent (Bordeaux/Hamburg range)  
or Scandinavia (including Denmark)  
Mediterranean (from Persian Gulf)  
SUEZ  
GIBRALTER  
Mediterranean (from Western Hemisphere).

(c) Any extra expense incurred in connection with any change in loading or discharging ports (so named) shall be paid for by the Charterer and any time thereby lost to the Vessel shall count as used laytime.

5. **LAYDAYS.** Laytime shall not commence before the date stipulated in Part I, except with the Charterer's sanction. Should the Vessel not be ready to load by 4:00 o'clock P.M. (local time) on the cancelling date stipulated in Part I, the Charterer shall have the option of cancelling this Charter by giving Owner notice of such cancellation within twenty-four (24) hours after such cancellation date, otherwise, his Charter to remain in full force and effect.

6. **NOTICE OF READINESS.** Upon arrival at customary anchorage at each port of loading or discharge, the Master or his agent shall give the Charterer or his agent notice by letter, telegraph, wireless or telephone that the Vessel is ready to load or discharge cargo, berth or no berth, and laytime, as hereinafter provided, shall commence upon the expiration of six (6) hours after receipt of such notice, or upon the Vessel's arrival in berth (i.e., finished mooring when at a scalding or discharging terminal and all fast when loading or discharging alongside a wharf), whichever first occurs. However, where delay is caused to Vessel getting into berth after giving notice of readiness for any reason over which Charterer has no control, such delay shall not count as used laytime.

7. **HOURS FOR LOADING AND DISCHARGING.** The number of running hours specified as laytime in Part I shall be permitted the Charterer as laytime for loading and discharging cargo; but any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to load or discharge cargo within the time allowed shall not count as used laytime. If regulations of the Owner or port authorities prohibit loading or discharging of the cargo at night, time so lost shall not count as used laytime, if the Charterer, shipper or consignee prohibits loading or discharging at night, time so lost shall count as used laytime. Time consumed by the vessel in moving from loading or discharge port anchorage to her loading or discharge berth, discharging ballast water or slops, will not count as used laytime.

8. **DEMURRAGE.** Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. If, however, demurrage shall be incurred at ports of loading and/or discharge by reason of fire, explosion, storm or by a strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo, the rate of demurrage shall be reduced one-half of the amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by strike, lockout, stoppage or restraint of labor for Master, officers and crew of the Vessel or tugboat or pilots.

9. **SAFE BERTHING-SHIFTING.** The vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters reachable on her arrival, which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the Charterer. The Charterer shall have the right of shifting the Vessel at ports of loading and/or discharge from one safe berth to another on payment of all towage and pilotage shifting to next berth, charges for running lines on arrival at and leaving that berth, additional agency charges and expense, customs overtime and fees, and any other extra port charges or port expenses incurred by reason of using more than one berth. Time consumed on account of shifting shall count as used laytime except as otherwise provided in Clause 15.

10. **PUMPING IN AND OUT.** The cargo shall be pumped into the Vessel at the expense, risk and peril of the Charterer, and shall be pumped out of the Vessel at the expense of the Vessel, but at the risk and peril of the Vessel only so far as the Vessel's permanent hose connections, when delivery of the cargo shall be taken by the Charterer or its consignee. If required by Charterer, Vessel after discharging is to clear shore pipe lines of cargo by pumping water through them and time consumed for this purpose shall apply against allowed laytime. The Vessel shall supply her pumps and the necessary power for discharging in all ports, as well as necessary hands. However, should the Vessel be prevented from supplying such power by reason of regulations prohibiting fires on board, the Charterer or consignee shall supply, at its expense, all power necessary for discharging as well as loading, but the Owner shall pay for power supplied to the Vessel for other purposes. If cargo is loaded from lighters, the Vessel shall furnish steam at Charterer's expense for facilities for generating steam and is permitted to have fires on board. All overtime of officers and crew incurred in loading and/or discharging shall be for account of the Vessel.

11. **HOSSES: MOORING AT SEA TERMINALS.** Hoses for loading and discharging shall be furnished by the Charterer and shall be connected and disconnected by the Charterer, or, at the option of the Owner, by the Owner at the Charterer's risk and expense. Laytime shall continue until the hoses have been disconnected. When Vessel loads or discharges at a sea terminal, the Vessel shall be properly equipped at Owner's expense for

neglect, default or battery of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel, fire, unless caused by the personal design or neglect of the Owner, collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property, wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of the cargo, any act or omission of the Charterer or Owner, shipper or consignee of the cargo, their agents or representatives, insufficiency of packing, insufficiency or inadequacy of marks, explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery, unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied, or from any other cause of whatsoever kind arising without the actual fault or privity of the Owner. And neither the Vessel nor Master or Owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from - Act of God, act of war, perils of the seas, act of public enemies, pirates or assailing thieves, arrest or restraint of princes, rulers or people, or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo, strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general, or riot or civil commotion.

#### 20. ISSUANCE AND TERMS OF BILLS OF LADING

(a) The Master shall, upon request, sign Bills of Lading in the form appearing below for all cargo shipped but without prejudice to the rights of the Owner and Charterer under the terms of this Charter. The Master shall not be required to sign Bills of Lading for any port which, the Vessel cannot enter, remain at and leave in safety and always afloat nor for any blocked port.

(b) The carriage of cargo under this Charter Party and under all Bills of Lading issued for the cargo shall be subject to the statutory provisions and other terms set forth or specified in sub-paragraphs (i) through (vii) of this clause and such terms shall be incorporated verbatim or be deemed incorporated by the reference in any such Bill of Lading. In such sub-paragraphs and in any Act referred to therein, the word "carrier" shall include the Owner and the Charterer/Owner of the Vessel.

(i) **CLAUSE PARAMOUNT.** This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Acts of the United States, approved April 16, 1936, except that if this Bill of Lading is issued at a place where any other Act, ordinance or legislation gives statutory effect to the International Convention for the Unification of Certain Rules relating to Bills of Lading at Brussels, August 1924, then this Bill of Lading shall have effect, subject to the provisions of such Act, ordinance or legislation. The applicable Act, ordinance or legislation (hereinafter called the "Act") shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the Owner of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the Act. If any term of this Bill of Lading be repugnant to the Act to any extent, such term shall be void to that extent but no further.

(ii) **JASON CLAUSE.** In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owner is not responsible, by statute, contract or otherwise, the cargo shippers, consignees or owners of the cargo shall contribute with the Owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving ship is owned or operated by the Owner, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Owner or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery.

(iii) **GENERAL AVERAGE.** General Average shall be adjusted, stated and settled according to York/Antwerp Rules 1950 and, as to matters not provided for by those rules, according to the laws and usages at the port of New York or at the port of London, whichever place is specified in Part I of this Charter. If a General Average statement is required, it shall be prepared at such port or place in the United States or United Kingdom, whichever country is specified in Part I of this Charter, as may be selected by the Owner, unless otherwise mutually agreed, by an Adjuster appointed by the Owner and approved by the Charterer. Such Adjuster shall attend to the settlement and the collection of the General Average, subject to customary charges. General Average Agreements and/or security shall be furnished by the cargo and/or Charterer, and/or Owner and/or Consignee of cargo, if requested. Any cash deposit being made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared.

(iv) **BOTH TO BLAME.** If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Owner in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder shall indemnify the Owner against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Owner. The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the carrying ship or object are at fault in respect of a collision or contact.

(v) **LIMITATION OF LIABILITY.** Any provision of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to the owner or chartered owner of vessels by any statute or rule of law for the time being in force.

(vi) **WAR RISKS.** (a) If any port of loading or of discharge named in this Charter Party or to which the Vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or

(b) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered - (i) by the Master or Owners in his or their discretion dangerous or prohibited or (b) if it be considered by the Master or Owners in his or their discretion dangerous or impossible for the Vessel to reach any such port of loading or discharge - the Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports, respectively established under the provisions of the Charter Party (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owner's discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charterers within 48 hours after they or their agents have received from the Owners a request for the nomination of a substitute port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of the Charter Party or not) and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo is discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the provisions of the Charter Party, the Charter Party shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. In the event, however, that the Vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of the Charter Party, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and or discharging the cargo thereat shall be paid by the Charterers or Cargo Owners. In the latter event the Owners shall have a lien on the cargo for all such extra expenses.

(c) The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the government of the nations under whose flag the Vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

## Exhibit 1 Annexed to Affidavit of Thomas A. Dillon, Jr.

loading or discharging at such place, including suitable ground tackle, mooring lines and equipment for handling submarine hoses.

12. **DUES-TAXES-WHARFAGE.** The Charterer shall pay all taxes, dues and other charges on the cargo, including but not limited to Customs overtime on the cargo, Venezuelan Habilitation Tax, C.I.M. Taxes at Le Havre and Portuguese Imposto de Comercio Maritime. The Charterer shall also pay all taxes on freight at loading or discharging ports and any unusual taxes, assessments and governmental charges which are not presently in effect but which may be imposed in the future on the Vessel or freight. The Owner shall pay all dues and other charges on the Vessel (whether or not such dues or charges are assessed on the basis of quantity of cargo), including but not limited to French droits de quai and Spanish derramas taxes. The Vessel shall be free of charges for the use of any wharf, dock, place or mooring facility arranged by the Charterer for the purpose of loading or discharging cargo, however, the Owner shall be responsible for charges for such berth when used solely for Vessel's purposes, such as awaiting Owner's orders, tank cleaning, repairs, etc. before, during or after loading or discharging.

13. (a). **CARGOES EXCLUDED VAPOR PRESSURE.** Cargo shall not be shipped which has a vapor pressure at one hundred degrees Fahrenheit (100°F.) in excess of thirteen and one half pounds (13.5 lbs.) as determined by the current A.S.T.M. Method (Reid) D-123.

(b). **FLASH POINT.** Cargo having a flash point under one hundred and fifteen degrees Fahrenheit (115°F.) (closed cup) A.S.T.M. Method D-56 shall not be loaded from lighters but this clause shall not restrict the Charterer from loading or topping off Crude Oil from vessels or barges inside or outside the bar at any port or place where bar conditions exist.

14. (a). **ICE.** In case port of loading or discharge should be inaccessible owing to ice, the Vessel shall direct her course according to Master's judgment, notifying by telegraph or radio, if available, the Charterers, shipper or consignee, who is bound to telegraph or radio orders for another port, which is free from ice and where there are facilities for the loading or reception of the cargo in bulk. The whole of the time occupied from the time the Vessel is diverted by reason of the ice until her arrival at an ice-free port of loading or discharge, as the case may be, shall be paid for by the Charterer at the demurrage rate stipulated in Part I.

(b) If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging place for fear of the Vessel being frozen in or damaged, the Master shall communicate by telegraph or radio, if available, with the Charterer, shipper or consignee of the cargo, who shall telegraph or radio him in reply, giving orders to proceed to another port as per Clause 14 (a) where there is no danger of ice and where there are the necessary facilities for the loading or reception of the cargo in bulk, or to remain at the original port at their risk, and in either case Charterer to pay for the time that the Vessel may be delayed, at the demurrage rate stipulated in Part I.

15. **TWO OR MORE PORTS COUNTING AS ONE.** To the extent that the freight rate standard of reference specified in Part I F hereof provides for special groupings or combinations of ports or terminals, any two or more ports or terminals within each such grouping or combination shall count as one port for purposes of calculating freight and demurrage only, subject to the following conditions:

(a) Charterer shall pay freight at the highest rate payable under Part I F hereof for a voyage between the loading and discharge ports used by Charterer.

(b) All charges normally incurred by reason of using more than one berth shall be for Charterer's account as provided in Clause 9 hereof.

(c) Time consumed shifting between the ports or terminals within the particular grouping or combination shall not count as used laytime.

(d) Time consumed shifting between berths within one of the ports or terminals of the particular grouping or combination shall count as used laytime.

16. **GENERAL CARGO.** The Charterer shall not be permitted to ship any packaged goods or non-liquid bulk cargo of any description, the cargo the Vessel is to load under this Charter is to consist only of liquid bulk cargo as specified in Clause I.

17. (a). **QUARANTINE.** Should the Charterer send the Vessel to any port or place where a quarantine exists, any delay thereby caused to the Vessel shall count as used laytime; but should the quarantine not be declared until the Vessel is on passage to such port, the Charterer shall not be liable for any resulting delay.

(b). **FUMIGATION.** If the Vessel, prior to or after entering upon this Charter, has docked or docks at any wharf which is not rat free or stegomyia-free, she shall, before proceeding to a rat-free or stegomyia-free wharf, be fumigated by the Owner at his expense, except that if the Charterer ordered the Vessel to an infected wharf the Charterer shall bear the expense of fumigation.

18. **CLEANING.** The Owner shall clean the tanks, pipes and pumps of the Vessel to the satisfaction of the Charterer's Inspector. The Vessel shall not be responsible for any admixture if more than one quality of oil is shipped, nor for leakage, contamination or deterioration in quality of the cargo unless the admixture, leakage, contamination or deterioration results from (a) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (b) error or fault of the servants of the Owner in the loading, care or discharge of the cargo.

19. **GENERAL EXCEPTIONS CLAUSE.** The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage, or delay or failure in performing hereunder, arising or resulting from:— any act,

If by reason of or in compliance with any such direction or recommendation the Vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the Vessel may proceed to any safe port of discharge which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge has been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterers and/or Cargo Owners and the Owners shall have a lien on the cargo for freight and all such expenses.

(vii) **DEVIATION CLAUSE.** The Vessel shall have liberty to call at any ports in any order, to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or of landing any ill or injured person on board, and to call for fuel at any port or ports in or out of the regular course of the voyage. Any salvage shall be for the sole benefit of the Owner.

21. **LIEN.** The Owner shall have an absolute lien on the cargo for all freight, deadfreight, demurrage and costs, including attorney fees, of recovering the same, which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any Bills of Lading covering the same or of any storage man.

22. **AGENTS.** The Owner shall appoint Vessel's agents at all ports.

23. **BREACH.** Damages for breach of this Charter shall include all provable damages, and all costs of suit and attorney fees incurred in any action hereunder.

24. **ARBITRATION.** Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of this charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator had been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either arbitrator may apply to a Judge of any court of maritime jurisdiction in the city above mentioned for the appointment of a third arbitrator, and the appointment or such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees, and judgement may be entered upon any award made hereunder in any Court having jurisdiction in the premises.

25. **SUBLET.** Charterer shall have the right to sublet the Vessel. However, Charterer shall always remain responsible for the fulfillment of this Charter in all its terms and conditions.

26. **OIL POLLUTION CLAUSE.** Owner agrees to participate in Charterer's program covering oil pollution avoidance. Such program prohibits discharge overboard of all oily water, oily ballast or oil in any form of a persistent nature, except under extreme circumstances whereby the safety of the vessel, cargo or life at sea would be imperiled.

Upon notice being given to the Owner that Oil Pollution Avoidance controls are required, the Owner will instruct the Master to retain on board the vessel all oily residues from consolidated tank washings, dirty ballast, etc., in one compartment, after separation of all possible water has taken place. All water separated to be discharged overboard.

If the Charterer requires that demulsifiers shall be used for the separation of oil/water, such demulsifiers shall be obtained by the Owner and paid for by Charterer.

The oil residues will be pumped ashore at the loading or discharging terminal, either as segregated oil, dirty ballast or co-mingled with cargo as it is possible for Charterers to arrange. If it is necessary to retain the residue on board co-mingled with or segregated from the cargo to be loaded, Charterers shall pay for any deadfreight so incurred.

Should it be determined that the residue is to be co-mingled or segregated on board, the Master shall arrange that the quantity of tank washings be measured in conjunction with cargo suppliers and a note of the quantity measured made in the vessel's ullage record.

The Charterer agrees to pay freight as per the terms of the Charter Party on any consolidated tank washings, dirty ballast, etc., retained on board under Charterer's instructions during the loaded portion of the voyage up to a maximum of 1% of the total deadweight of the vessel that could be legally carried for such voyage. Any extra expenses incurred by the vessel at loading or discharging port in pumping ashore oil residues shall be for Charterer's account, and extra time, if any, consumed for this operation shall count as used laytime.

## BILL OF LADING

Shipped in apparent good order and condition by \_\_\_\_\_

on board the \_\_\_\_\_

Steamship  
Motorship

whereof \_\_\_\_\_

is Master, at the port of \_\_\_\_\_

to be delivered at the port of \_\_\_\_\_

or so near thereto as the Vessel can safely get, always afloat, unto \_\_\_\_\_

or order on payment of freight at the rate of \_\_\_\_\_

This shipment is carried under and pursuant to the terms of the contract dated New York/London \_\_\_\_\_

between \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_

Charterer, and all the terms whatsoever of the said charter except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment \_\_\_\_\_

In witness whereof the Master has signed \_\_\_\_\_

Bills of Lading

of this tenor and date, one of which being accomplished, the others will be void.

Dated at \_\_\_\_\_

this \_\_\_\_\_

day of \_\_\_\_\_

Master

A 55

EXHIBIT 2--TELEX DATED JULY 24, 1974 ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

ITT 07 24 1814

420635 TSHP U183127722+

OUT

IN

1974 JUL 24 PM 6:23

NC AUTO-RETRY

0019

27722 CEPSE E

CEPSA

MADRID

12  
TH  
US  
MLK  
11/13

WE REFER TO TELEPHONE CONVERSATION TODAY OF THE LONDON AGENTS OF  
NEREUS SHIPPING S A WITH YOUR MR P BUSTAMANTE IN WHICH NEREUS  
SHIPPING S A AS AGENTS FOR OWNERS (OWNER) ASKED TO HAVE ITS  
REPRESENTATIVES MEET WITH COMPANIA ESPANOLA DE PETROLEOS S A (CEPSA)  
THIS WEEK TO DISCUSS THE HIDROCARBUROS Y DERIVADOS, C A (HIDECA)  
CONTRACT OF AFFREIGHTMENT DATED 27 JANUARY 1971, BUT CEPSA STATED  
THE EARLIEST DATE FOR MEETING WOULD BE AUGUST 2ND STOP IN  
VIEW OF THE URGENCY OF THIS MATTER OWNER CANNOT DEFER TAKING  
ACTION UNTIL THAT DATE STOP ACCORDINGLY OWNER REFERS TO LETTER  
OF GUARANTEE IN HIS FAVOR GIVEN BY CEPSA MADE AND DATED 24 JUNE  
1971 AT MADRID BY THE TERMS OF WHICH CEPSA AGREED THAT SHOULD  
HIDECA DEFAULT FOR PAYMENT OR PERFORMANCE OF ITS OBLIGATIONS  
UNDER THE CONTRACT OF AFFREIGHTMENT DATED 27 JANUARY 1971  
(CHARTER PARTY) CEPSA, UPON NOTICE FROM OWNER, WOULD PERFORM  
THE BALANCE OF THE CHARTER PARTY AND ASSUME THE RIGHTS AND  
OBLIGATIONS OF HIDECA ON THE SAME TERMS AND CONDITIONS AS  
CONTAINED IN THE CHARTER PARTY STOP OWNER HEREBY GIVES CEPSA  
NOTICE UNDER SAID LETTER OF GUARANTEE THAT HIDECA IS IN  
DEFAULT UNDER THE CHARTER PARTY AND CALLS UPON CEPSA TO PERFORM  
THE BALANCE OF THE CHARTER PARTY STOP AS THE PURPOSE OF THE  
SUGGESTED VISIT WAS TO ASSIST CEPSA IN THE ORDERLY TRANSITION  
OF THE CHARTER PARTY TO IT, OWNERS REPRESENTATIVE WILL MEET  
WITH CEPSA ON AUGUST 2ND IN MADRID STOP PLEASE CONFIRM THAT  
THIS DATE IS IN ORDER STOP

TRITON SHIPPING INC

AS AGENTS ONLY

NEW YORK JULY 24, 1974 1622 HOURS

27722 CEPSE E

420635 TSHP UI

07/24/74 1822EDX 004.6

EXHIBIT 3--ORDER OF ATTACHMENT AND SUPPORTING AFFIDAVITS  
ANNEXED TO AFFIDAVIT OF THOMAS A. DILLON, JR.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

NEREUS SHIPPING, S.A., as Agents  
for Owners,

Plaintiff,

-against-

ORDER OF ATTACHMENT

HIDROCARBUROS Y DERIVADOS, C.A.,

Defendant.

74 civ. 3235

CHM

----- x

Plaintiff having moved for an Order of Attachment  
against the defendant in an action in this Court,

Now, reading the verified complaint herein, the  
affidavit of Demetrios Xistris, sworn to the 26th day of July,  
1974, together with the exhibits annexed thereto and the affidavit  
of Raymond J. Burke, Jr. sworn to the 26th day of July, 1974,  
wherein it appears that a cause of action for a money judgment  
exists in favor of the plaintiff and against the defendant for  
the sum stated in said complaint and affidavits, namely,  
\$4,236,845.67, and that the plaintiff is entitled to recover  
said sum above all counter-claims known to it;

And it being further shown by said affidavit and  
complaint that the plaintiff is entitled to an Order of  
Attachment against the property of the defendant on the ground  
that said defendant is a foreign corporation organized and  
existing under the laws of Venezuela, under Rule 64 of the

*Exhibit 3 Annexed to Affidavit of Thomas A. Dillon, Jr.*

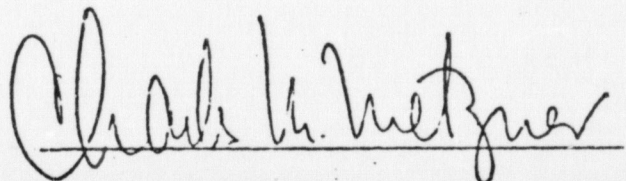
Federal Rules of Civil Procedure and Section 6201 (1) of the Civil Practice Law and Rules of the State of New York:

Now, on motion of Burke & Parsons, attorneys for plaintiff, it is

ORDERED, that the plaintiff's undertaking be and the same hereby is fixed in the sum of \$423,684<sup>-</sup> of which amount the sum of \$418,684<sup>-</sup> thereof is conditioned that the plaintiff will pay to the defendant all legal costs and damages which may be sustained by reason of the attachment if the defendant recovers judgment or if it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property and the balance thereof, being the sum of \$5,000<sup>-</sup> conditioned that the plaintiff will pay to the United States Marshal of the Southern District of New York all of his allowable fees and expenses, it is further

ORDERED, that the United States Marshals for the Southern and Eastern Districts of New York, upon the filing of plaintiff's undertaking as aforesaid, levy within their jurisdiction, at any time before final judgment, upon property in which the defendant has an interest and upon such debts owing to the defendant as will satisfy the plaintiff's demand of \$4,236,845.67, together with probable interest, costs and the fees and expenses of the United States Marshals for the Southern and Eastern Districts of New York, and that they proceed thereon in the manner required by law.

Dated: New York, New York  
July 26, 1974



U.S.D.J.

*Exhibit 3 Annexed to Affidavit of Thomas A. Dillon, Jr.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

NEREUS SHIPPING, S.A., as Agents  
for Owners,

Plaintiff,

-against-

HIDROCARBUROS Y DERIVADOS, C.A.,

Defendant.

AFFIDAVIT IN SUPPORT  
OF PLAINTIFF'S  
APPLICATION FOR AN  
ORDER OF ATTACHMENT

74 civ. 3235

----- x

STATE OF NEW YORK )  
(ss.:  
COUNTY OF NEW YORK

DEMETRIOS XISTRIS, being duly sworn, deposes and says:

1. I am President of Triton Shipping, Inc., a New York corporation with an office and principal place of business at 1041 Third Avenue, in the City of New York, which corporation acts as Agent of the Plaintiff herein, Nereus Shipping, S.A., a Liberian corporation which has an office and principal place of business at 35-39 Akti Miaouli, Piraeus, Greece.

2. Hidrocarburos Y Derivados, C.A., the Defendant herein, is a Venezuelan corporation which has an office at Apartado 59021, Caracas, Venezuela.

3. Plaintiff, as Agent for Owners of various vessels, entered into a contract of affreightment dated January 27, 1971 (hereinafter referred to as the "COA") with the Defendant. A

copy of the COA is annexed hereto and made a part hereof as Exhibit 1.

4. During performance of the thirteenth lifting under the COA, port expenses in the amount of \$344.18 were incurred at the discharging port and were paid for by Plaintiff. Under the COA, this sum should have been paid by Defendant to Plaintiff with the freight and is earned and past due.

5. During performance of the fourteenth lifting under the COA, increased war risk insurance premiums in the amount of \$15,000.00 were incurred and demurrage in the amount of \$68,529.18 was earned at loading and discharging ports. Under the COA, these sums should have been paid by Defendant to Plaintiff with the freight and are earned and past due.

6. During performance of the fifteenth lifting under the COA deviation expenses in the amount of \$30,032.26 were incurred and demurrage in the amount of \$143,355.47 was earned at loading and discharging ports. Under the COA, these sums should have been paid by Defendant to Plaintiff with the freight and are earned and past due.

7. During performance of the sixteenth lifting under the COA, interest on late payment of freight in the amount of \$3,930.92 was earned and demurrage in the amount of \$143,797.20 was earned at loading and discharging ports. Under the COA, these sums should have been paid by Defendant to Plaintiff with the freight and are earned and past due.

8. During performance of the seventeenth lifting

under the COA, freight in the amount of \$770,424.17 was earned and demurrage in the amount of \$61,432.29 was earned at the loading port. Under the COA, these sums should have been paid by Defendant to Plaintiff upon discharge of the cargo and, although these sums have been fully earned and duly demanded, Defendant has refused to pay same, thereby breaching the COA.

9. Plaintiff nominated the S.T. TROPIC to perform the eighteenth lifting under the COA, but Defendant has refused this nomination, thereby breaching the COA.

10. By reason of the Defendant's failure to pay earned freight and the Defendant's refusal to accept the nomination of the S. T. TROPIC, the Defendant has breached the COA subjecting Plaintiff to damages in the amount of \$3,000,000.00, as near as can presently be ascertained.

11. As a result of Defendant's breach of the COA, Plaintiff has invoked the guarantee provisions of the COA, demanding that the guarantor, Compania Espanola de Petroleos, S.A., perform the balance of the COA.

12. Plaintiff's causes of action are for a money judgment only, and Defendant has not asserted any counterclaim.

13. No previous application for the same or similar relief has been made before this or any other American Court, although litigation has been commenced in Morocco.

14. Your deponent respectfully requests that an order of attachment be entered against the property of Defendant,

Exhibit 3 Annexed to Affidavit of Thomas A. Dillon, Jr.

Hidrocarburos Y Derivados, C.A. in the amount of \$4,236,845.67 and that this Honorable Court may grant to Plaintiff such other and further relief as may be just and proper.

*Plaintiff*

Demetrios Xistris

Sworn to before me this  
26th day of July, 1974.

*Raymond J. Burke Jr.*  
Notary Public, State of New York  
No. 81-450673  
Qualified in New York County  
Commission Expires March 1975

Exhibit 3 Annexed to Affidavit of Thomas A. Dillon, Jr.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

NEREUS SHIPPING, S.A., as Agents  
for Owners,

Plaintiff,

-against-

HIDROCARBUROS Y DERIVADOS, C.A.,

Defendant.

AFFIDAVIT IN SUPPORT  
OF PLAINTIFF'S  
APPLICATION FOR AN  
ORDER OF ATTACHMENT

74 civ. 3235

----- x

STATE OF NEW YORK     )  
                              (ss.:  
COUNTY OF NEW YORK    )

RAYMOND J. BURKE, JR., being duly sworn, deposes and  
says:

1. I am an attorney duly admitted to practice before  
this Honorable Court and am a member of the firm of Burke &  
Parsons, attorneys for plaintiff herein.

2. Plaintiff is a Liberian corporation which has an  
office and principal place of business at 35-39 Akti Miaouli,  
Piraeus, Greece. Defendant is a Venezuelan corporation which  
has an office at Apartado 59021, Caracas, Venezuela.

3. As set forth in plaintiff's verified complaint  
and the affidavit of Demetrios Xistris sworn to the 26th day of  
July, 1974, plaintiff, as Agent for Owners of various vessels,  
is asserting six causes of action against defendant under a

contract of affreightment dated January 27, 1971 (hereinafter referred to as the "COA") a copy of which is annexed as an exhibit to the complaint and affidavit of Mr. Xistris.

4. Plaintiff's first cause of action is for reimbursement for port expenses at the discharging port during performance of the thirteenth lifting under the COA in the amount of \$344.18. This sum should have been paid by defendant to plaintiff with the freight and is earned and past due.

5. Plaintiff's second cause of action is for reimbursement of war risk premiums and for demurrage which was earned at the loading and discharging ports during performance of the fourteenth lifting under the COA in the amount of \$83,529.18. This sum should have been paid by defendant to plaintiff with the freight and is earned and past due.

6. Plaintiff's third cause of action is for deviation expenses and for demurrage which was earned at the loading and discharging ports during performance of the fifteenth lifting under the COA in the amount of \$173,387.73. This sum should have been paid by defendant to plaintiff with the freight and is earned and past due.

7. Plaintiff's fourth cause of action is for interest on late payment of freight and for demurrage which was earned at the loading and discharging ports during performance of the sixteenth lifting under the COA in the amount of \$147,728.12. This sum should have been paid by defendant to plaintiff with the freight and is earned and past due.

8. Plaintiff's fifth cause of action is for demurrage and freight in the amount of \$831,856.46 which has been earned by the plaintiff as Agent as a result of performance of the seventeenth lifting under the COA. S.S. POETIC carried a full cargo of 64,164.64 long tons of crude oil from Ras Tanura to Mohammedia, and completed delivery of the cargo on July 11, 1974. Under the terms of the COA, freight in the amount of \$770,424.17 was earned and payable by defendant to plaintiff upon discharge of the cargo. Defendant has refused to pay the freight and demurrage in the amount of \$831,856.46, although this sum is fully earned and payable under the terms of the COA.

9. Plaintiff's sixth cause of action is for breach of the COA as a result of non-payment of freight and refusal to accept the nomination of the vessel to perform the eighteenth lifting. By reason of the defendant's failure to pay earned freight and the defendant's refusal to accept the nomination of the S.T. TROPIC, the defendant has breached the COA subjecting plaintiff to damages in the amount of \$3,000,000.00, as near as can presently be ascertained. As a result of defendant's breach of the COA, plaintiff has invoked the guarantee provisions of the COA, demanding that the guarantor, Compania Espanola de Petroleos, S.A. perform the balance of the COA.

10. Defendant is a Venezuelan corporation and plaintiff is seeking an order of attachment under Rule 64 of the Federal Rules of Civil Procedure which provides as follows:

*Exhibit 3 Annexed to Affidavit of Thomas A. Dillon, Jr.*

"Seizure of Person or Property"

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held, existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted or, if removed from a state court, shall be prosecuted after removal, pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action."

11. Section 6201(1) of the Civil Practice Law and Rules of the State of New York provides as follows:

"Grounds for attachment"

An order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when:

1. the defendant is a foreign corporation or not a resident or domiciliary of the state; or \* \* \* . "

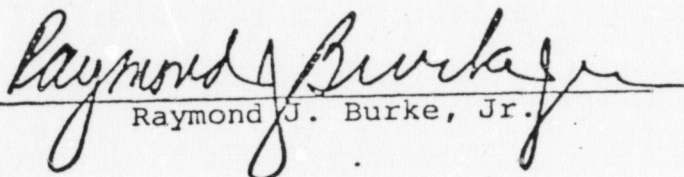
12. Plaintiff's causes of action are for a money judgment only, and defendant has not asserted any counterclaim.

13. No previous application for the same or similar relief has been made before this or any other American Court, although litigation has been commenced in Morocco.

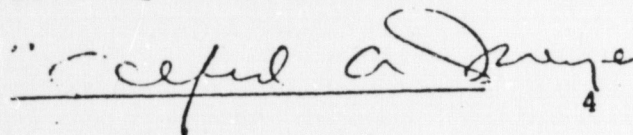
A 66

*Exhibit 3 Annexed to Affidavit of Thomas A. Dillon, Jr.*

14. Your deponent respectfully requests that an order of attachment be entered against the property of defendant, Hidrocarburos Y Derivados, C.A. in the amount of \$4,236,845.67 and that this Honorable Court may grant to plaintiff such other and further relief as may be just and proper.

  
Raymond J. Burke, Jr.

Sworn to before me this  
26th day of July, 1974.

  
4

ALFRED A. MEYER  
Notary Public, State of New York  
No. 31-2678560  
Qualified in New York County  
Commission Expires March 30, 1975

EXHIBIT 4--AFFIDAVIT OF DEMETRIOS XISTRIS DATED  
NOVEMBER 25, 1974 ANNEXED TO AFFIDAVIT  
OF THOMAS A. DILLON, JR.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff,

-against-

NEREUS SHIPPING, S.A.,

Defendant.

AFFIDAVIT IN  
OPPOSITION TO  
PLAINTIFF'S  
MOTION

74 Civ. 5102 (CES)

----- x

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF NEW YORK)

DEMETRIOS XISTRIS, being duly sworn, deposes and  
says:

1. I am President of Triton Shipping, Inc., a  
New York corporation with an office and principal place of  
business at 1041 Third Avenue, in the City of New York, which  
corporation acts as Agent of the Defendant herein, Nereus  
Shipping, S.A., a Liberian corporation which has an office  
and principal place of business at 35-39 Akti Miaouli, Piraeus,  
Greece (hereinafter referred to as "Defendant").

2. On July 26, 1974, deponent signed an affidavit  
in support of an application by Defendant for an order of  
attachment of the property of Hidrocarburos Y Derivados, C.A.,  
a Venezuelan corporation with an office at Apartado 59021,  
Caracas, Venezuela (hereinafter referred to as "Hideca") in

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

an action commenced in this Honorable Court by Defendant against Hideca, 74 Civ. 3235.

3. In the aforesaid affidavit, deponent confirmed that as of July 26, 1974, Hideca was in default under a Contract of Affreightment dated January 27, 1971 (hereinafter referred to as the "Charter"), and had failed to pay various items for expenses, demurrage, extra insurance premiums and freight in the amount of \$1,236,845.67, which were past due and owing to Defendant by Hideca under the Charter.

4. No item comprising the aforesaid \$1,236,845.67 has been paid to Defendant since July 26, 1974 and Defendant was unable to locate any assets of Hideca which could be attached pursuant to the order of attachment issued in 74 Civ. 3235.

5. The items totaling \$1,236,845.67 which remain unpaid by Hideca include the following:

- |      |  |              |
|------|--|--------------|
| i)   | Port expenses on voyage 13, which was completed on November 23, 1972   | \$344.18     |
| ii)  | Increased War Risk insurance premiums of \$15,000.00 and demurrage of \$68,529.18 on voyage 14, which was completed on February 21, 1973 | \$83,529.18  |
| iii) | Deviation expenses and demurrage on voyage 15, which was completed on March 16, 1973   | \$173,387.73 |

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

iv) Demurrage on voyage 16,  
which was completed on  
April 10, 1973 \$143,797.20

6. In addition, Hideca has failed to date to pay freight for the last cargo carried under the Charter, which was delivered on July 12, 1973. Clause 2 of Part II of the Charter entitled Freight provided that "Payment of freight shall be made by Charterer without discount upon delivery of cargo at destination \* \* \* " However, Hideca has failed to pay freight for the 17th cargo in the amount of \$770,424.17 and demurrage at the loading port of \$61,432.29, which sums remain unpaid to date.

7. The freight rate in the Charter is Worldscale 130 which is equivalent to \$13.27 per ton of cargo for the basic Persian Gulf rate. The present market rate is approximately Worldscale 40 or \$4.84 per ton.

8. Up to July 24, 1974 a total of 209,751 long tons of cargo were shipped under the Charter by Hideca during the last year out of the 600,000 plus 10% called for in typewritten clause 1 of the Charter. Moreover, Plaintiff herein has refused to perform the balance of the Charter although duly notified on July 24, 1974 under Addendum No. 2 to the Charter.

Sworn to before me this  
25th day of November, 1974.

\_\_\_\_\_  
Demetrios Xistris

A 70

EXHIBIT 5--TELEX DATED AUGUST 2, 1974 ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

STC015  
LONG TANKR NYK

THI IS TRITON SHIPPING INC

ATTN MR JOSEPH MC ALEER  
HIDECA COA DATED JANUARY 27, 1971

OUT

IN

1974 AUG -2 PM 10:32

CONFIRMING TELCON OF EARLIER THIS MORNING PLEASE PASS FOLLOWING  
PROMPTLY TO CEPSE MADRID

QUOTE

WE HAVE BEEN ADVISED BY NEREUS SHIPPING S.A. THAT  
UNDER ITS GUARANTEE WITH RESPECT TO THE HIDECA COA  
DATED JANUARY 27, 1971 THAT DUE TO THE DEFAULT OF  
HIDECA COMSA NEREUS HAS EXERCISED ITS RIGHTS UNDER  
THE GUARANTEE AND HAS CALLED UPON YOU TO PERFORM THE  
BALANCE OF THE COA. ACCORDINGLY ON BEHALF OF  
NEREUS WE HEREBY GIVE YOU THIRTY DAYS NOTICE OF A  
DEFINITE NOMINATION OF THE "MAJESTIC" E.T.A. P.G.  
SEPTEMBER 7TH, 1974.

UNQUOTE

WE FURTHER REQUEST YOUR OFFICE TO PROVIDE US WITH A CONFIRMATION  
COPY OF YOUR CABLE TO CEPSE

TRITON SHIPPING INC  
AS AGENTS ONLY

2

HOW RECVD PLS

00 TANKR NYK

WELL RECVD TKU

011.

RJ  
TH  
WS  
MLR  
WV  
FB

A 71

EXHIBIT 6--TELEX DATED AUGUST 9, 1974 ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

113764/030374/165

FROM CEP SA MADRID  
TO TRITON SHIPPING INC NEW YORK

2<sup>OUT</sup>  
1574 AUG-9 11:14

ALJ  
TA  
WS  
MLK  
WV  
1-15

REYOURTEL JULY 24, 1974 IN WHICH YOU AS NEREUS SHIPPING SA'S AGENT  
ADVISE THAT OWNER IN CONTRACT OF AFFREIGHTMENT WITH HIDECA DATED  
27 JANUARY 1971 ACCORDING TO CEP SA'S LETTER OF GUARANTEE DATED 24  
JUNE 1971 THEREBY GAVE CEP SA NOTICE THAT HIDECA IS IN DEFAULT AND  
CALLED UPON CEP SA TO PERFORM THE BALANCE OF THE ABOVE MENTIONED  
CONTRACT. HIDECA ADVISES THAT IT IS NOT IN DEFAULT BUT NEREUS  
SHIPPING SA HAS IMPROPERLY TERMINATED SUCH CONTRACT AND THEREFORE  
CEP SA'S LETTER OF GUARANTEE MUST BE DEEMED NOT IN FORCE AND SUBSE-  
QUENTLY CEP SA IS NOT OBLIGED TO PERFORM THE NEREUS/HIDECA CONTRACT OF  
AFFREIGHTMENT. IN ADDITION WE HAVE RECEIVED FROM LONGTANKER NYK A  
TELEX DATED AUGUST 2, 1974 BY WHICH SUCH FIRM ON BEHALF OF NEREUS  
THEREBY GIVES CEP SA THIRTY DAYS NOTICE OF A DEFINITIVE NOMINATION  
OF THE MAJESTIC ETA PG SEPTEMBER 7TH. SINCE IT IS FAR FROM CLEAR TO  
US THAT YOU HAVE PROPERLY INVOKED THE GUARANTEE BEFORE WE RESPOND  
TO THE AFORESAID NOMINATION WE MUST RECEIVE FROM YOU ADEQUATE  
ASSURANCE THAT YOU WILL HOLD US HARMLESS FROM ANY DAMAGES OR LOSSES  
WE MAY INCUR AS A RESULT OF ACCEPTING THAT NOMINATION IN THE EVENT  
THAT YOU HAVE IMPROPERLY INVOKED THE GUARANTEE AND WE ARE NOT  
OBLIGED TO PERFORM HIDECA'S OBLIGATIONS UNDER THE SAID CONTRACT  
OF AFFREIGHTMENT. PLEASE ADVISE US AS TO WHAT GUARANTEE YOU WILL  
PROVIDE PROTECTING US AGAINST SUCH DAMAGES AND LOSSES.+++

AFL

⊕

420625 TSHIP UI

A 72

EXHIBIT 7--TELEX DATED AUGUST 22, 1974 ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

UPG  
#5031 8/22/74 NY/LDN

TO CML FROM CHART  
CC: OD/CENT

CEPSA

FOLLOWING TELEX SENT BY BURKE TODAY  
QUOTE ATTENTION MESSRS PARDO, MIRET AND ASSENS  
RE CHARTER PARTY DATED 27 JANUARY 1971

I REFER TO OUR SEVERAL MEETINGS AT CEPSA'S OFFICES IN MADRID  
ON MONDAY THROUGH WEDNESDAY, AUGUST 19/21, 1974 DURING WHICH TIME  
WE DISCUSSED THE MATTER OF CEPSA PERFORMING THE BALANCE OF THE  
NEREUS/HIDECA/CEPSA CHARTER PARTY X FOLLOWING CEPSA'S REQUEST  
THAT NEREUS FURNISH IT WITH A BANK GUARANTY, THE WRITER  
WENT TO MADRID TO COMPLY WITH THAT REQUEST AND DRAFTED THE BANK  
GUARANTY WITH MODIFICATIONS AS REQUIRED BY CEPSA X NEREUS  
AGREED TO GIVE CEPSA A BANK GUARANTY ISSUED BY THE FIRST  
NATIONAL CITY BANK COVERING THE MAJESTIC AND ATHENIC, OR  
SUBSTITUTE, VOYAGES TOGETHER WITH INTEREST THEREON AND TO  
FURNISH ADDITIONAL BANK GUARANTIES FOR SUBSEQUENT VESSELS IN  
THE EVENT THE ISSUES WERE NOT RESOLVED BY SUCH DATES X THIS  
WAS AGREED BY CEPSA X ALTHOUGH CEPSA HAD NO LEGAL RIGHT TO  
REQUIRE NEREUS TO GIVE SUCH BANK GUARANTY, IT WILLINGLY AGREED  
TO DO SO SINCE PAYMENT WOULD ONLY BE MADE IF IT WERE HELD  
THAT HIDECA WAS NOT IN DEFAULT AND THEREFORE CEPSA WAS NOT  
LIABLE UNDER THE NOTICE GIVEN BY NEREUS TO PERFORM THE BALANCE  
OF THE VOYAGES UNDER ADDENDUM NBR 2 OF THE CHARTER PARTY X  
ON TUESDAY, MR ASSENS, ON BEHALF OF CEPSA, CONFIRMED IN A  
TELEPHONE CONVERSATION WITH MR PETER BRIGGS WHO, WITH THE  
WRITER ATTENDED ALL OF THE MEETINGS ON BEHALF OF NEREUS,  
THAT CEPSA WOULD PERFORM THE BALANCE OF THE CHARTER PARTY  
FOR 367,240 LONG TONS OF CARGO, AS NEREUS HAD THEN AGREED  
TO EXTEND THE PERIOD IN WHICH CEPSA WAS OBLIGED TO PERFORM  
THE BALANCE OF THE CHARTER PARTY FOR A FURTHER PERIOD OF  
TWO MONTHS THROUGH FEBRUARY 28, 1975.

IN THE PRESENCE OF MESSRS PARDO, MIRET, BRIGGS AND THE WRITER,  
MR ASSENS CONFIRMED AT THE MEETING ON WEDNESDAY MORNING  
THAT CEPSA HAD AGREED ON TUESDAY TO PERFORM THE BALANCE OF THE  
CHARTER PARTY AND FURNISH CARGOS IN THE AGGREGATE AMOUNT OF  
367,240 LONG TONS OF CARGO X HOWEVER, AFTER APOLOGIZING, MR  
ASSENS SAID CEPSA'S DECISION AS OF WEDNESDAY MORNING WAS  
TO REFUSE TO SHIP ANY CARGO UNDER THE CHARTER PARTY SINCE  
CEPSA DID NOT KNOW WHETHER HIDECA WAS OR WAS NOT IN DEFAULT  
UNDER THE CHARTER PARTY.

MR ASSENS FURTHER STATED THAT CEPSA WOULD NOT ACCEPT THE  
TENDER OF THE MAJESTIC DUE IN SEPTEMBER NOR THE ATHENIC OR  
SUBSTITUTE DUE IN OCTOBER, BOTH OF WHICH HAD BEEN NOMINATED  
TO CEPSA.

OUT

1814 AUG 22 PM 7:05

NJ  
IN TH  
WS  
MLK  
FO  
KV

*Exhibit 7 Annexed to Affidavit of Thomas A. Dillon, Jr.*

FROM THE VENT OUTLET COMMENCING WITH THE FIRST RECEIPT AT MADRID ON AUGUST 2, 1974, CEPSA WAS AWARE THAT HIDECA'S POSITION WAS THAT IT WAS NOT IN DEFAULT X ALL THE PARTIES, INCLUDING CEPSA, RECOGNIZED THAT IT WOULD BE ILLOGICAL FOR HIDECA NOT TO ASSERT SUCH A DEFENSE SINCE OTHERWISE IT WOULD HAVE NO DEFENSE TO OFFER IN ARBITRATION BETWEEN NEREUS AND HIDECA X ACCORDINGLY, ALL OF THE NEGOTIATIONS THAT FOLLOWED (INCLUDING THE CALL BY CEPSA FOR A GUARANTY AND THE GRANTING OF THAT REQUEST BY NEREUS, AS WELL AS NEREUS' WILLINGNESS TO EXTEND THE PERIOD WITHIN WHICH THE CHARTER PARTY IS TO BE PERFORMED) WERE WITH THE FULL KNOWLEDGE THAT HIDECA WAS TAKING SUCH POSITION, ALTHOUGH IN THE OPINION OF NEREUS IT IS PATENTLY UNTEENABLE X IT THEREFORE IS CLEAR THAT THE TRANSPARENT EXCUSE OFFERED BY CEPSA FOR REPUDIATING ITS AGREEMENT OF TUESDAY AND FLAGRANTLY BREACHING THE BALANCE OF THE CHARTER PARTY WHICH IT HAS AN ABSOLUTE LEGAL OBLIGATION TO PERFORM, IS UNWORTHY OF A COMPANY OF THE SIZE AND REPUTATION OF CEPSA. FURTHERMORE, THE MERE ASSERTION BY CEPSA THAT IT IS UNCERTAIN WHETHER OR NOT HIDECA DEFAULTED UNDER THE NEREUS/HIDECA/CEPSA CHARTER PARTY DOES NOT EXCUSE CEPSA FROM PERFORMING THE CHARTER PARTY IN ACCORDANCE WITH ITS TERMS, AND THE RISK IS SOLELY UPON CEPSA X THIS IS PARTICULARLY SO SINCE NEREUS WAS WILLING TO FURNISH CEPSA WITH BANK GUARANTEES SHOULD NEREUS' NOTICE BE IMPROPER.

BY VIRTUE OF ADDENDUM NBR 2 OF THE CHARTER PARTY, CEPSA IS A PARTY TO THAT CHARTER WITH THE OBLIGATION TO PERFORM FOLLOWING NOTICE IN ACCORDANCE WITH ITS TERMS X CEPSA WAS AND IS A PARTY TO THE CHARTER PARTY AND BY ADDENDUM NBR 2 CLEARLY AGREED TO BE SUBSTITUTED IN THE PLACE OF HIDECA FOR THE BALANCE THEREOF X SINCE CEPSA NOW HAS REFUSED TO PERFORM THE BALANCE OF THE CHARTER PARTY, THIS MATTER MUST NOW BE RESOLVED BY ARBITRATION AS PROVIDED IN THE CHARTER PARTYX ACCORDINGLY ON BEHALF OF NEREUS, WE HEREBY PUT CEPSA ON NOTICE THAT ITS REFUSAL TO ACCEPT THE NOMINATIONS OF THE MAJESTIC AND ATHENIC AND ITS ASSERTION THAT IT WILL NOT PERFORM THE BALANCE OF THE CHARTER PARTY CONSTITUTE A MATERIAL BREACH OF THE CHARTER PARTY FOR WHICH NEREUS WILL HOLD IT LIABLE IN DAMAGES AT THREE AND ONE-HALF MILLION DOLLARS AS NEAR AS CAN BE PRESENTLY ASCERTAINED X NEREUS FURTHER DEMANDS ARBITRATION WITH CEPSA UNDER THE CHARTER PARTY AND HEREBY NOMINATES MR LLOYD C NELSON, ORION AND GLOBAL CHARTERING CO INC, 29 BROADWAY NEW YORK NEW YORK USA AS ARBITRATOR X UNLESS YOU PROMPTLY ADVISE US OF THE NAME OF YOUR ARBITRATOR, WE SHALL HAVE NO ALTERNATIVE BUT TO PROCEED IN COURT TO HAVE THE COURT APPOINT AN ARBITRATOR X WE WOULD ALSO APPRECIATE YOUR ADVISING US OF THE NAME OF YOUR ATTORNEY SO THAT WE MAY CONFER WITH HIM CONCERNING THE SCHEDULING OF ARBITRATION HEARINGS X

RAYMOND J BURKE ESQ  
UNQUOTE

TS: 1028

A 74

EXHIBIT 8--TELEX DATED AUGUST 30, 1974 ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

T  
RCA0635/30+  
222560 AZIMUTH  
27678 CEPSE E

114349/300874/12:34

FROM CEPSE MADRID  
TO AZIMUTH NEW YORK

ATTN. MR. RAYMOND J. BURKE

RE YOUR TEL 22 AUG 74 IN CONNECTION WITH NEREUS/  
HIDECA COA STOP WE ARE VERY SURPRISED AT YOUR STATEMENTS  
WHICH ARE NOT IN ACCORDANCE WITH WHAT HAPPENED AT THE  
MEETINGS IN OUR OFFICE STOP ALTHOUGH THERE WERE NUMEROUS  
DISCUSSIONS NO, REPEAT NO, AGREEMENT WAS REACHED ON ANY  
POINT STOP WE HAVE BEEN ADVISED BY HIDECA THAT THEY ARE  
NOT IN DEFAULT AND THEREFORE NEREUS HAS NO RIGHT TO DEMAND  
PERFORMANCE OF THE COA FROM US STOP IN VIEW OF YOUR  
DISPUTE WITH HIDECA YOU MUST FIRST OBTAIN A JUDGMENT IN  
YOUR FAVOR BEFORE SEEKING TO ENFORCE GUARANTY.

CEPSE IS NOT A PARTY TO THE CHARTER AND CANNOT BE REQUIRED  
TO ARBITRATE ANY DISPUTES IN CONNECTION THEREWITH STOP  
WE UNDERSTAND THAT HIDECA HAS DEMANDED ARBITRATION FROM  
NEREUS AND NEREUS MUST FIRST ARBITRATE WITH HIDECA  
BEFORE SEEKING TO INVOKE GUARANTY STOP

CEPSE RESERVES ALL ITS RIGHTS AND DEFENSES UNDER THE  
GUARANTY AND THE APPLICABLE LAW STOP

PLEASE BE ADVISED THAT CEPSE HAS APPOINTED THE NEW YORK  
LAW FIRM OF POLES, TUBLIN, PATESTIDES AND STRATAKIS AND YOU  
AND NEREUS SHOULD DIRECT ALL FUTURE COMMUNICATION TO THEM  
. ATTENTION: MR. DALY OR MR. MARTIN.

REGARDS +++

LUIS FUSTE

---  
MAA+  
222560 AZIMUTH  
27678 CEPSE E

A 75

EXHIBIT 9--LETTER DATED SEPTEMBER 16, 1974 ANNEXED  
TO AFFIDAVIT OF THOMAS A. DILLON, JR.

COMPANIA  
ESPAÑOLA  
DE  
PETROLEOS  
S.A.

Messrs. Burke & Parson  
52 Wall Street  
New York, N.Y. 10005  
U.S.A.

DEPTO:

Número:

Ref.º

Madrid- September 16, 1974

Attn. Mr. Raymond J. Burke

Gentleman,

We refer to the notice dated September 3, 1974, served to us by Mr. Antonio Gomez Arboleya pursuant to which NEREUS SHIPPING, S.A. has nominated Mr. Lloyd C. Nelson as an arbitrator under the charter party dated January 27, 1971, between NEREUS and HIDROCARBUROS Y DE RIVADOS, C.A. (HIDECA).

We hereby reject said notice and will not nominate any arbitrator as demanded by NEREUS. CEPSA is under no obligation to arbitrate any dispute with NEREUS. NEREUS has not established that HIDECA has defaulted under the charter.

Further we have been advised that NEREUS and HIDECA have each appointed arbitrators pursuant to the terms of the charter party to determine their respective rights and obligations. The obligations of CEPSA are to be determined pursuant to the terms of the guaranty dated June 24, 1971 which does not contain any arbitration clause.

The foregoing was written without prejudice to any rights and defenses of CEPSA under the terms of the guaranty and under any law that may be applicable thereto.

We remind you that we have appointed the firm of POLES, TUBLIN, PATESTIDES AND STRATAKIS to represent our interests in connections with the foregoing matter and request that you direct all further communications to them.

Please be advised that this letter is being sent to you through the Notary Public of Madrid Mr. Antonio Moxó for proper evidence.

Very truly yours,

COMPANIA ESPAÑOLA DE PETROLEOS, S. A.

Juan A. Giliso Giner

Director General Adjunto

Reg. Merc. (Madrid) - 6.045/100/205 Sociedades

CEPSA

Avenida de América, 32 • Madrid (2) • Telex

54 00 - 255 64 00 • Telex: 27-678 y 27 722 • CEPSA E

A 76

EXHIBIT 10--LETTER DATED NOVEMBER 4, 1974 ANNEXED  
TO AFFIDAVIT OF THOMAS A. DILLON, JR.

BURKE & PARSONS  
COUNSELORS AT LAW  
52 WALL STREET  
NEW YORK, N.Y. 10005

RAYMOND J. BURKE  
J. LESTER PARSONS, JR.  
MAX TAYLOR  
THOMAS A. DILLON, JR.  
ALFRED A. MEYER  
J. LESTER PARSONS, III  
RAYMOND J. BURKE, JR.

DIGBY 4-1030  
CABLE ADDRESS 42 M.L.T.H.  
TELEX 222560  
CONNECTICUT OFFICE  
TAYLOR BUILDING  
COS COS 06807  
TEL. 203-869-4211

November 4, 1974

RECEIVED  
NOV 4 1974

Messrs. Poles, Tublin, Patestides  
& Stratakis  
37 Wall Street  
New York, New York 10005

POLES, TUBLIN  
PATESTIDES & STRATAKIS

Attention: Mr. Patrick V. Martin

Re: Arbitration Between  
Nereus Shipping, S.A.  
and Compania Espanola  
De Petroleos, S.A. (CEPSA)  
under Charter Party Dated  
January 27, 1971  
Our Ref. No. 12-529-2

Dear Sir:

On August 22, 1974, as attorneys for Nereus Shipping S.A., we sent a telex message to CEPSPA pursuant to the arbitration clause (i.e. Part II, paragraph 24) of the above mentioned Charter Party demanding arbitration and naming Mr. Lloyd C. Nelson of Orion and Global Chartering Co. Inc. as the arbitrator appointed by Nereus.

Thereafter pursuant to paragraph 24 of the Charter Party, on September 3, 1974, Antorio Gomez Arboleya, Esq. personally served upon an officer of CEPSPA at its office in Madrid a notice and demand for arbitration naming Mr. Nelson as the arbitrator appointed by Nereus and describing the existing dispute between the parties. By letter to us dated September 16, 1974, CEPSPA advised us that they would not name an arbitrator and requested us to direct all further communications to you as their attorneys.

The arbitration clause of the Charter Party provides that "if the other party shall not, by notice

Exhibit 10 Annexed to Affidavit of Thomas A. Dillon, Jr.

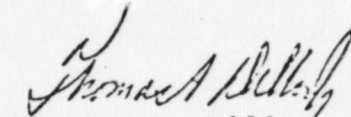
2.

served upon the first moving party within twenty days" name an arbitrator, the moving party has the right to appoint a second disinterested arbitrator with the same force and effect as if named by the other party. Acting in accordance with the provisions of the Charter Party, Nereus named Mr. Manfred W. Arnold of National Bank of North America as the second arbitrator. Mr. Nelson and Mr. Arnold appointed Mr. Harry G. Webber of Frances A. Martin & Ottaway Inc. to act as the third arbitrator.

The Arbitration Panel has now scheduled the first hearing in this dispute for November 21, 1974 at 5:00 PM at our office.

Very truly yours,

BURKE & PARSONS



Thomas A. Dillon, Jr.

TAD, JR.:se

REPLY AFFIDAVIT OF PATRICK V. MARTIN IN SUPPORT OF  
ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
COMPANIA ESPANOLA DE PETROLEOS, S.A., :  
Plaintiff, : 74 Civ. 5102  
- against - :  
NEREUS SHIPPING, S.A., :  
Defendant : AFFIDAVIT  
-----x

PATRICK V. MARTIN, being duly sworn deposes and says:

1. That he is a member of Poles, Tublin, Patestides & Stratakis, attorneys for the plaintiff and makes this affidavit in reply to that of THOMAS A. DILLON, Jr., a member of the firm of Burke & Parsons, attorneys for the defendant.

2. This case involves a COA dated January 27, 1971 between Nereus (Owner-defendant) and HIDECA (charterer) and a related guaranty dated June 24, 1971 executed by CEPESA (Guarantor-plaintiff). Since CEPESA was only a guarantor to the COA, many of the allegations set forth in Mr. Dillon's affidavit can neither concern matters about which CEPESA has no direct knowledge and is not in a position to either confirm nor deny. In particular, paragraphs 7, 8, 9 and 10, contain material allegations about the relationship between Nereus and HIDECA and the alleged (and unproven) breach by HIDECA of the COA.

3. We were retained by CEPESA after it received the

*Reply Affidavit of Patrick V. Martin*

telex of Burke and Parsons, dated August 22, 1974, referred to in paragraph 14 of Mr. Dillon's affidavit. Thereafter, we contacted the firm of Baker and McKenzie, the attorneys for HIDECA and requested that they forward to us copies of all telexes and correspondence exchanged between HIDECA and Nereus. We have been advised that these documents are voluminous and were still being collected, sorted and indexed. However, we have received certain of the telexes exchanged between Nereus and HIDECA around the time that the COA was fixed and relating to the proposed terms of the CEPESA Guaranty.

4. Annexed hereto as exhibits "A", "B", "C", "D" and "E" are certain of the telexes and letters regarding the terms of the Guaranty.

Exhibit "A" is apparently a telex from the New York charter broker, Long, Zuinn & Boylan, to "Madridoil" the HIDECA office in Madrid. This long telex contains the proposed terms of an extensive and detailed Guaranty, prepared on behalf of Nereus, to be executed by CEPESA. Clause "C" of the proposed Guaranty specifically refers to arbitration in New York.

Exhibit "B" is apparently copy of a proposed guaranty from the charter broker to HIDECA. Again, Clause C refers to arbitration in New York.

Exhibit "C" is a telex from "Madridoil" to the charter broker setting forth the terms of the proposed guaranty suggested by CEPESA. There is no reference in these terms to

*Reply Affidavit of Patrick V. Martin*

arbitration in New York nor to the many of the terms set forth in the Nereus draft of the Guaranty as set forth in Exhibits "A" and "B".

Exhibit "D" is a telex from the charter broker to HIDECA stating that "Owners agree to CEPSE's form of Guaranty".

The wording of Exhibit "C" is similar to that of the actual Guaranty executed in Madrid on June 24, 1971.

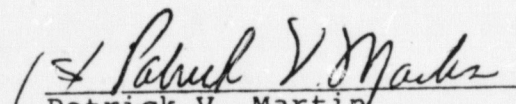
5. We have forwarded copies of the Exhibits "A" "B" "C" and "D" and the other telexes and correspondence between Nereus and HIDECA to CEPSE for its comments but to date have received no definitive reply. CEPSE is a substantial intergrated oil company and apparently these matters are handled by several different departments.

6. It is CEPSE's position that the terms of the Guaranty of June 24, 1971 are clear and unambiguous and do not require it to arbitrate any disputes with Nereus.

However, if the court wishes to consider any extrinsic matters, then Exhibits "A", "B", "C" and "D" clearly establish that Nereus initially proposed that CEPSE be compelled to arbitrate any disputes; that CEPSE rejected that wording, and that the executed Guaranty does not provide for arbitration.

Sworn to before me this

26th day of November, 1974

  
Patrick V. Martin

BRADIX des MARETS DODD  
Notary Public, State of New York  
No. 246051045  
Commission Expires March 30, 1976

EXHIBIT A--GUARANTY ANNEXED TO REPLY AFFIDAVIT  
OF PATRICK V. MARTIN

att: mr. <sup>508c</sup> ignacio llopert.

re: c of a terms

- 1) item 17 and 19 revertin
- 2) item 12 agree suppliers approval but add quote which shall not be unreasonably withheld unquote
- 3) re guarantee quote below owners suggested form

+++++  
guaranty  
-----

For good and valuable consideration, receipt of which is hereby acknowledged, and in order to induce nereus shipping s.a., as agents for owners, a corporation organized and existing under the laws of the state of Liberia (hereinafter called 'owners'), to enter into a contract of affreightment dated the date hereof (hereinafter called 'charter') with

a corporation organized and existing under the laws of  
(hereinafter called 'charterers'),

to which this guaranty is attached, the undersigned

hereby covenants and agrees that:

(a) the undersigned unconditionally guarantees to owners payment and performance of the charter including without limitation:

(i) all payments to be made by charterers pursuant to the charter will be made when due in accordance with the terms of the charter.

(ii) in case of an extension or extensions of time of any such payment, such payment will be made when due in accordance with the terms of any such extension.

(iii) all other obligations and agreements of charterers under the charter will promptly be performed in accordance with the terms of the charter.

(b) if charterers shall default in any payment required by the terms of the charter or in the performance of any of the other obligations or agreements required by such terms to be performed by charterers and such default shall have continued for a period of 15 days, the undersigned will, on demand, make such payment or perform such obligation or agreement, as the case may be, and will pay to owners any and all damages that owners may incur or suffer in consequence of such a default and all reasonable expenses and attorneys' fees that may be incurred by owners in enforcing such obligations and agreements of charterers or in enforcing the covenants and agreements of the undersigned herein.

(c) at the option of owners, recovery may be had against the undersigned in any action or proceeding brought against the undersigned, including arbitration as provided in the charter and the undersigned agrees to appear in and be bound by any award in such arbitration, but not to the exclusion of any other action or proceeding in connection with and based upon the charter or any provision thereof without any requirement that owners first prosecute or exhaust any remedy or claim against charterers.

Exhibit A Annexed to Reply Affidavit of Patrick V. Martin

(d) at any time and from time to time, without termination affecting or impairing the validity of this guaranty or the obligations of the undersigned hereunder, owners may deal with charterers in the same manner and as freely as if this guaranty did not exist and shall be entitled, among other things, to grant charterers such extension or extensions of time to perform any act or acts as may to owners seem advisable.

(e) the validity of this guaranty and the obligations of the undersigned hereunder shall not be terminated, affected or impaired by reason of any renewal, extension, modification or amendment of the charter or any assignment by the charterers of any interest under the charter.

(f) the validity of this guaranty and the obligations of the undersigned hereunder shall not be terminated, affected or impaired by reason of the exercise by owners of, or by reason of any waiver of or failure to enforce, any of the rights or remedies reserved to owners in the charter or otherwise.

(g) all the covenants and agreements of the undersigned in this guaranty contained shall bind the undersigned and its successors and assigns and shall inure to the benefit of owners and to owners' successors and assigns, whether so expressed or not.

(h) the undersigned hereby appoints the secretary of state of the state of new york as its agent to receive service of process on said agent, provided a copy of such process is mailed by registered mail in an envelope addressed to it at the following address: however, the undersigned agrees that the aforesaid appointment does not preclude owners from instituting any suit, action or proceeding in any other jurisdiction than within the state of new york, where jurisdiction may be obtained.

(i) this guaranty shall be construed and governed by the laws of state of new york. this guaranty may not be changed orally but only by an agreement in writing signed by the person against whom enforcement of any waiver, change, modification or discharge is sought.

In witness whereof, the undersigned has caused this guaranty to be executed by its officer duly authorized this \_\_\_\_\_ day of february, 1971.

state of new york  
county of new york

} ss.:

on this \_\_\_\_\_ day of february, 1971, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_ that he is \_\_\_\_\_

: that he is the individual described in and who executed the foregoing instrument by order of the board of directors of said corporation; and that he acknowledged to me that he executed the same.

EXHIBIT B--GUARANTY ANNEXED TO REPLY AFFIDAVIT  
OF PATRICK V. MARTIN

GUARANTY

For good and valuable consideration, receipt  
of which is hereby acknowledged, and in order to induce  
*Nereus Shipping S.A.,*  
~~Triton Shipping, Inc.~~, as agent for owners, a corporation  
organized and existing under the laws of the State of  
*Liberia* ~~New York~~ (hereinafter called "Owners"), to enter into a  
contract of affreightment dated the date hereof (hereinafter  
called "Charter") with  
a corporation organized and existing under the laws of  
(hereinafter called "Charterers"),  
to which this Guaranty is attached, the undersigned

hereby covenants and agrees that:

(a) The undersigned unconditionally guarantees  
to Owners payment and performance of the Charter including  
without limitation:

(1) All payments to be made by Charterers  
pursuant to the Charter will be made when due  
in accordance with the terms of the Charter.

(11) In case of an extension or extensions  
of time of any such payment, such payment will

2.

be made when due in accordance with the terms of any such extension.

(iii) All other obligations and agreements of Charterers under the Charter will promptly be performed in accordance with the terms of the Charter.

(b) If Charterers shall default in any payment required by the terms of the Charter or in the performance of any of the other obligations or agreements required by such terms to be performed by Charterers and such default shall have continued for a period of 15 days, the undersigned will, on demand, promptly make such payment or perform such obligation or agreement; as the case may be, and will pay to Owners any and all damages that Owners may incur or suffer in consequence of such a default and all reasonable expenses and attorneys' fees that may be incurred by Owners in enforcing such obligations and agreements of Charterers or in enforcing the covenants and agreements of the undersigned herein.

(c) At the option of Owners, recovery may be had against the undersigned in any action or proceeding

3.

brought against the undersigned, including arbitration as provided in the Charter and the undersigned agrees to appear in and be bound by any award in such arbitration, but not to the exclusion of any other action or proceeding in connection with and based upon the Charter or any provision thereof without any requirement that Owners first prosecute or exhaust any remedy or claim against Charterers.

(d) At any time and from time to time, without terminating, affecting or impairing the validity of this Guaranty or the obligations of the undersigned hereunder, Owners may deal with Charterers in the same manner and as freely as if this Guaranty did not exist and shall be entitled, among other things, to grant Charterers such extension or extensions of time to perform any act or acts as may to Owners seem advisable.

(e) The validity of this Guaranty and the obligations of the undersigned hereunder shall not be terminated, affected or impaired by reason of any renewal, extension, modification or amendment of the Charter or any assignment by the Charterers of any interest under the Charter.

4.

(f) The validity of this Guaranty and the obligations of the undersigned hereunder shall not be terminated, affected or impaired by reason of the exercise by Owners of, or by reason of any waiver of or failure to enforce, any of the rights or remedies reserved to Owners in the Charter or otherwise.

(g) All the covenants and agreements of the undersigned in this Guaranty contained shall bind the undersigned and its successors and assigns and shall inure to the benefit of Owners and to Owners' successors and assigns, whether so expressed or not.

(h) The undersigned hereby appoints the Secretary of State of the State of New York as its agent to receive service of process on said agent, provided a copy of such process is mailed by registered mail in an envelope addressed to it at the following address:

However, the undersigned agrees that the aforesaid appointment does not preclude Owners from instituting any suit, action or proceeding in any other jurisdiction than within the State of

5.

New York, where jurisdiction may be obtained.

(1) This Guaranty shall be construed and governed by the Laws of the State of New York. This Guaranty may not be changed orally but only by an agreement in writing signed by the person against whom enforcement of any waiver, change, modification or discharge is sought.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be executed by its officer duly authorized this            day of February, 1971.

Exhibit B Annexed to Reply Affidavit of Patrick V. Martin

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this day of February, 1971, before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at that he is

; that he is the individual described in and who executed the foregoing instrument by order of the Board of Directors of said corporation; and that he acknowledged to me that he executed the same.

A 89

EXHIBIT C--TELEX DATED MARCH 12, 1971 ANNEXED TO  
REPLY AFFIDAVIT OF PATRICK V. MARTIN

420327 LQB UI  
22271 OILSA E

MADRIDOIL 2233

MARCH 12/71

LONGTANKER - NEW YORK

C OF A - 3 YEARS / CEPASA'S GUARANTEE

ATT MR LONG

FURTHER TO OUR 2135 OF MARCH 4TH BELOW PLEASE FIND TEXT OF MESSAGE  
RECEIVED FROM CEPASA:

QUOTE

WE REFER TO THE CONTRACT OF AFFREIGHTMENT DATED 27TH JANUARY 1971  
BETWEEN HIDROCARBUROS Y DERIVADOS C.A. (HIDECA) AND YOURSELVES. IN  
CONNECTION WITH SAID AFFREIGHTMENT WE ARE PLEASED TO INFORM YOU  
THAT SAME IS DUE TO THE CIRCUMSTANCE THAT HIDECA IS GOING TO USE  
THE TONNAGE IN QUESTION FOR THE TRANSPORTATION OF CRUDE OIL TO  
CEPSA DURING THE PERIOD OF TIME OF THREE YEARS STARTING NOVEMBER  
1971 1/ JANUARY 1972. THIS CRUDE OIL HAS BEEN PURCHASED BY CEPASA  
FROM HIDECA BY VIRTUE OF AGREEMENT BETWEEN BOTH FIRMS AND WHICH  
AS A RESULT OF HIDECA'S CONTRACTING SAID FREIGHT HIDECA SHALL  
DELIVER SAID CRUDE ON CIF BASIS.

WE HEREBY INFORM YOU THAT IN THE EVENT HIDECA WOULD CEASE TO USE  
SAID TONNAGE DERIVED OF THE CONTRACT OF AFFREIGHTMENT IN QUESTION  
CEPSA WOULD SUBROGATE ITSELF IN THE RIGHTS AND OBLIGATIONS OF SAID  
FIRM IN SUCH CONTRACT IN THE SAME TERMS AND CONDITIONS AS FROM  
THE DATE IN WHICH SUCH FAULT OF UTILIZATION WOULD ARISE AND  
CONSEQUENTLY WITHOUT ANY RESPONSABILITY WHATSOEVER AS FAR AS WE  
ARE CONCERN WITH RESPECT TO ANY OBLIGATION EXISTING PRIOR TO SUCH  
DATE.

UNQUOTE

PLEASE LET US HAVE OWNERS COMMENTS ON THE ABOVE PROPOSAL.

REGARDS - LLOPART  
MADRIDOIL

22271 OILSA E  
MADRID TIME: 1:00 PM  
420327 LQB UI

*addition to C/P*

A 90

EXHIBIT D--TELEX DATED APRIL 19, 1971 ANNEXED TO  
REPLY AFFIDAVIT OF PATRICK V. MARTIN

2 01 HIDECA  
RCAN 286 11470  
SALONG 224109

LONGTANKER NEW YORK APRIL 19, 1971

ATT: MR. TUDELA

RE: LEMOS/HIDECA CONTRACT OF AFFREIGHTMENT

OTHERS ACCEPT CEPBA'S FORM OF GUARANTEE  
STOP

DRAWING CHARTER PARTY WHICH MAILING TO YOU CARACAS FOR  
APPROVAL AND SIGNATURE

BEST REGARDS

JOHN CURRIN

20  
22601 HIDECA  
SALONG 224109N  
1143 0001.0

REPLY AFFIDAVIT OF THOMAS A. DILLON, JR. IN OPPOSITION TO  
ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff,

-against-

NEREUS SHIPPING, S.A.,

Defendant.

DEFENDANT'S REPLY  
AFFIDAVIT

74 Civ. 5102 (CES)

----- x

THOMAS A. DILLON, JR., being duly sworn, deposes and  
says:

1. I am an attorney duly admitted to practice before  
this Honorable Court and a member of the firm of Burke & Parsons,  
attorneys for the Defendant, and am familiar with all proceedings  
heretofore had herein.

2. This affidavit is submitted in reply to the Reply  
Affidavit of Patrick V. Martin dated November 26, 1974, which  
was served at the time of the hearing before this Honorable  
Court.

3. Plaintiff has submitted as Exhibits A and B of  
its affidavit copies of a draft of a guaranty submitted by  
Defendant to Plaintiff and has argued that such draft, which was  
not used by the parties, should be used to construe Addendum No. 2  
to the Charter, under which Plaintiff undertook to "perform the  
balance of the contract and assume the rights and obligations of

[Charterer] on the same terms and conditions as contained in the Charter Party".

4. The draft (Plaintiff's Exhibits A and B), provided, in part, as follows:

"(b) if charterers shall default in any payment required by the terms of the charter or in the performance of any of the other obligations or agreements required by such terms to be performed by charterers and such default shall have continued for a period of 15 days, the undersigned will, on demand, make such payment or perform such obligation or agreement, as the case may be, and will pay to owners any and all damages that owners may incur or suffer in consequence of such a default and all reasonable expenses and attorneys' fees that may be incurred by owners in enforcing such obligations and agreements of charterers or in enforcing the covenants and agreements of the undersigned herein.

"(c) at the option of owners, recovery may be had against the undersigned in any action or proceeding brought against the undersigned, including arbitration as provided in the charter and the undersigned agrees to appear in and be bound by any award in such arbitration, but not to the exclusion of any other action or proceeding in connection with and based upon the charter or any provision thereof without any requirement that owners first prosecute or exhaust any remedy or claim against charterers.

\* \* \*

"(h) the undersigned hereby appoints the Secretary of State of the State of New York as its agent to receive service of process on said agent, provided a copy of such process is mailed by registered mail in an envelope addressed to it at the following address:

However, the undersigned agrees that the aforesaid appointment does not preclude owners from instituting any suit, action or proceeding in any other jurisdiction than within the State of New York, where jurisdiction may be obtained."

5. The draft of the Guaranty, which contained an acknowledgment to be signed before a Notary, also indicated that

it was to be a separate instrument and not an Addendum to the Charter.

6. In accepting the wording of Addendum No. 2 to the Charter, it will be noted that the parties agreed to make it an addendum to the Charter as shown by the handwritten addition to Plaintiff's Exhibit C to its Reply Affidavit, which words state "Addendum to C/P". Moreover, although the Charter is dated January 27, 1971, as indicated by the telex message of the broker (Exhibit D to Plaintiff's Reply Affidavit), the Charter was not signed until after Addendum No. 2 was agreed to by Plaintiff. Exhibit D which is dated April 19, 1971, states as follows:

"Owners accept CEPSEA's (i.e., Plaintiff's) form of guaranty STOP Drawing Charter Party which mailing to you Caracas for approval and signature."

7. Far from suggesting that Plaintiff is not obligated to arbitrate the dispute concerning its refusal to perform the balance of the Charter as required by Addendum No. 2 thereto, Plaintiff's Exhibits A - D tend to confirm Plaintiff's obligation to arbitrate for the following reasons:

(a) Instead of being obligated to pay all sums and damages caused by a default by Hideca after expiration of a waiting period of 15 days as provided in the Guaranty, under Addendum No. 2 to the Charter, Plaintiff is not liable for such sums prior to Defendant's notice calling upon Plaintiff to perform the balance of the Charter.

(b) Instead of being subject to suit anywhere in

*Reply Affidavit of Thomas A. Dillon, Jr.*

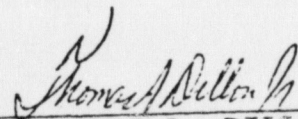
the world and instead of having the New York Secretary of State its agent for service of process, under Addendum No. 2 to the Charter Plaintiff was obligated to "assume the rights and obligations of Hideca (i.e., Charterer) on the same terms and conditions as contained in the Charter Party". These terms and conditions included the arbitration clause of the Charter.

(c) Defendant accepted Plaintiff's wording only with such wording being included as an Addendum to the Charter and not as a separate Guaranty.

(d) Based on the foregoing, it seems clear that if Defendant had instituted a suit against Plaintiff, Plaintiff could have stayed such action pending arbitration under the Charter.

(e) Nowhere was it suggested that Defendant could not proceed directly against Plaintiff or that Defendant was required to first move against Hideca.

8. Your deponent respectfully submits that Exhibits A - D of Plaintiff's Reply Affidavit further support Defendant's position that Plaintiff is obligated to arbitrate under the Charter the dispute concerning its refusal to perform the balance of the Charter, which required the shipment of an additional 450,249 long tons of oil during the months of July through December 1974.



---

THOMAS A. DILLON, JR.

[Sworn to November 27, 1974]

AFFIDAVIT OF LAWRENCE W. NEWMAN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

COMPANIA ESPANOLA DE PETROLEOS, S.A.,	:
Plaintiff,	: 74 Civ. 5102 (C.E.S.)
	:
- against -	:
	:
NEREUS SHIPPING, S.A.,	:
Defendant.	:

-----X

AFFIDAVIT

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF NEW YORK)

LAWRENCE W. NEWMAN, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York and of this Court and a member of the firm of Baker & McKenzie, attorneys for Hidrocarburos y Derivados, C.A. ("Hideca") in its pending arbitration with Nereus Shipping, S.A., the defendant in the above-captioned action. At the request of your Honor at the hearing held on November 26, 1974, I make this affidavit to set forth Hideca's position with respect to the preliminary injunction staying the arbitration of any alleged disputes between this plaintiff and defendant pending an adjudication of plaintiff's instant action for a declaratory judgment.

2. Hideca and the defendant entered into a contract of affreightment dated January 27, 1971 which provides for the chartering of oil tankers by Hideca from the defendant to carry a total of approximately 600,000 tons of crude oil per year for

three years. A copy of that contract of affreightment ("COA") with the specific terms more fully set forth is annexed as Exhibit A to the affidavit of Patrick V. Martin dated November 20, 1974.

3. During the course of the COA, which involved over 15 voyages of various ships transporting oil for which millions of dollars in freight charges were paid, disputes have arisen between defendant and Hideca regarding certain actions taken by both parties and the interpretation of certain contract terms and procedures.

4. Clause 24 of the COA provides for arbitration of disputes, and, on or about August 23, 1974, on behalf of Hideca, we served a Notice of Arbitration on defendant Nereus naming as one of the arbitrators Professor Andreas F. Lowenfeld of New York University School of Law and asserting (1) defendant Nereus committed a breach of the entire charter party, (2) defendant improperly withheld from Hideca a vessel which defendant had nominated and Hideca had accepted and expected, (3) defendant improperly and wrongfully obtained a court order purporting to attach certain assets of Hideca in Morocco and (4) defendant improperly and wrongfully invoked the guarantee of plaintiff. The Notice seeks an award of damages as established and a declaration that the charter party was terminated by the actions of Nereus.

5. On September 9, 1974, defendant, through a letter to our firm from its attorneys, Burke & Parsons, named Lloyd C. Nelson as its arbitrator and set forth its claims.

6. Hideca is prepared to arbitrate and desires to have all of its claims against the defendant Nereus heard and decided in the pending arbitration which Hideca instituted.

7. Although defendant in the Affidavit in Opposition to Plaintiff's Motion for a Preliminary Injunction by Thomas A. Dillon, Jr. dated November 25, 1974 ("Dillon Affidavit") went into some detail in describing its alleged claims against Hideca, I will not attempt here to describe in detail Hideca's claims against the defendant or dispute the statements of Mr. Dillon pertaining to Hideca, beyond saying that Hideca does not accept the accuracy of those statements. It is, however, important to note that in the arbitration against Hideca, the defendant is apparently seeking recovery of \$1,236,845.76 for alleged failure to make certain payments under the COA and in the arbitration against plaintiff Cepsa seeking \$3,794,599.07 from plaintiff Cepsa for Hideca's and plaintiff's alleged failure to perform the balance of the COA (Dillon Affidavit paragraphs 23, 24, 25 and 26).

8. One fact that may not have emerged clearly from the Dillon Affidavit is that the damages defendant is seeking in the arbitration instituted against it by Hideca and the damages the defendant is seeking in the arbitration purportedly involving Cepsa concern a single contract and a single set of facts concerning differences between the defendant and Hideca. One of the crucial questions to be decided in any arbitration between plaintiff Cepsa and defendant Nereus is whether or not plaintiff

*Affidavit of Lawrence W. Newman*

had any obligations under the guarantee, which does not come into effect unless Hideca has defaulted on its obligations under the COA.

9. As I stated to your Honor on November 26, 1974, Hideca is a party to the COA and seeks to have its claims against defendant decided and has instituted an arbitration proceeding to that end. We feel that the defendant, in seeking arbitration with plaintiff first, is trying to avoid Hideca's claims against it while seeking to recover over \$3 million in damages from the plaintiff Cepsa for an alleged breach of contract and default by Hideca.

10. We submit that if plaintiff is obliged to arbitrate with defendant that arbitration should be stayed until the arbitration between Hideca and the defendant has been completed.

*Lawrence W. Newman*

Lawrence W. Newman

Sworn to before me this  
27th day of November, 1974

*Goldie Rotenberg*

NOTARY PUBLIC  
Notary Public, State of New York  
No. 00000000000  
Queens County  
Commission Expires March 30, 1975

## MEMORANDUM-OPINION OF STEWART, D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff,

-against-

NEREUS SHIPPING, S.A.,

Defendant.  
----- x

:  
: 74 Civ. 5102  
:  
:  
:

M E M O R A N D U M

STEWART, DISTRICT JUDGE:

Plaintiff Compania Espanola de Petroleos, S.A. ("Cepsa") brings this action for declaratory and injunctive relief against defendant Nereus Shipping, S.A. ("Nereus"). Plaintiff seeks an order from this court that it is not legally obligated to proceed to arbitration as demanded by defendant in a dispute arising out of a contract of affreightment ("contract") between the defendant and charterer Hidrocarburos Y Derivados, C.A. ("Hideca").

Under the contract, Hideca agreed to ship 600,000 tons of crude oil and/or dirty petroleum products, 10 percent more or less at defendant's option, for a three-year period commencing December 24, 1971. While no dispute arose during the first two years of the contract, defendant alleges that Hideca defaulted in its performance of the contract during the third year. That dispute is the subject of separate arbitration proceedings by Hideca against defendant Nereus; there is apparently no contention

that these arbitration proceedings were improperly brought and, in any event, they are not presently before us.

What is before us is the issue of whether plaintiff Cepsa is obligated to arbitrate disputes arising from a Letter of Guaranty--Addendum 2 to the contract--signed by plaintiff Cepsa as a guarantor of Hideca. Under the guaranty, Cepsa agreed that "should Hideca default in payment or performance of its obligations under the Charter Party [contract of affreightment], we will perform the balance of the contract and assume the rights and obligations of Hideca on the same terms and conditions as contained in the Charter Party."

The addendum continues:

Provided, however, that Compania Espanola de Petroleos, S.A. shall not be responsible for any payments or damages as a result of HIDECA's default, prior to receiving written notice from the Owner [Nereus] advising us that HIDECA is in default, and calling upon us to assume performance of the Charter Party.

Believing that Hideca had defaulted in its performance of the contract of affreightment, Nereus notified Cepsa on July 24, 1974 that Hideca was in default and called upon Cepsa to perform the remainder of Hideca's obligations under the contract. There then followed an exchange of communications between plaintiff and defendant during which time Nereus contended that Cepsa was not fulfilling its obligations under the guaranty, and Cepsa countered that Nereus had improperly invoked the guaranty since Hideca was not actually in default.

Following this exchange, defendant Nereus served plaintiff with a demand for arbitration on September 3, 1974, on the theory that Cepsa had agreed to be bound by the arbitration clause in the contract when it signed the letter of guaranty. The arbitration clause provides in relevant part that "any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York...." It further provides that:

If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person, with precisely the same force and effect as if said second arbitrator has been appointed by the other party.

After Nereus named an initial arbitrator and Cepsa failed to name its own arbitrator, Nereus named a second arbitrator pursuant to the above clause. Those two arbitrators then appointed a third arbitrator in accordance with the arbitration clause of the contract.

The arbitration proceedings were scheduled to begin November 21, 1974. On that date, plaintiff Cepsa filed this action and successfully sought a temporary restraining order from this court enjoining the commencement of the scheduled arbitration proceedings.

Plaintiff now seeks an injunction to enjoin the defendant and the arbitrators from commencing the arbitration

proceedings. Plaintiff also seeks a declaratory judgment that it is not subject to the arbitration clause in the contract between Nereus and Hideca; that, alternatively, such arbitration may proceed only after a finding that Hideca has actually defaulted in its contractual obligations with Nereus; and that the arbitration panel was improperly constituted, since there was allegedly no arbitrable dispute between Cepsa and Nereus at the time the arbitrators were appointed.

For the reasons stated below, we deny plaintiff's request for declaratory and injunctive relief.

I. Incorporation of the Letter of Guaranty.

Plaintiff argues that its signing of the Letter of Guaranty did not obligate it to enter into arbitration with Nereus. It contends that while it agreed to perform the balance of the contract of affreightment under certain conditions, arbitration is not "performance," and hence it is not bound to arbitrate. We find it unnecessary to construe the meaning of the word "performance" in the contract, since by the addendum Cepsa agreed not only to perform the balance of the contract, but to "assume the rights and obligations of HIDECA on the same terms and conditions as contained in the Charter Party [contract of affreightment]." This language is clear and unequivocal, and, we believe, compels a finding that the Letter of Guaranty does incorporate the contract's arbitration clause. We do not believe that the proviso in the Letter of Guaranty requiring

Nereus to notify Cepsa of any default by Hideca causes us to modify this finding. That proviso obligated Nereus to advise Cepsa of Hideca's default, and to call upon Cepsa to "assume performance of the Charter Party." Even though this language does not reiterate that Cepsa was to assume the rights and obligations of HIDECA following alleged nonperformance, we do not believe such language was necessary.

Cases cited by plaintiffs that suggest the Letter of Guaranty does not incorporate the arbitration clause are distinguishable. In Production Steel Company of Illinois v. SS Francois L.D., 294 F. Supp. 200 (S.D.N.Y. 1968), the court held that a holder of a bill of lading made subject to all the terms and conditions of the Charter Party was not bound by the arbitration clause of the Charter Party. In that case, unlike the instant case, the arbitration clause was expressly and unequivocally applicable to disputes between "the owners and the charterers." In the instant case, the arbitration clause is more general, and calls for arbitration of "any and all disputes of whatsoever nature arising out of this Charter...." While the arbitration clause here does call for the appointment of arbitrators by "the owner" and "the charterer," we do not believe that language evinces a definite intent to preclude application of the arbitration clause to Cepsa as a guarantor of Hideca's obligations in the contract.

In Midland Tar Distillers, Inc. v. M/T LOTOS, 362 F. Supp. 1311 (S.D.N.Y. 1973) the court distinguished Production Steel, on the ground that in the latter case the bill of lading which purported to incorporate the Charter Party was detailed and exclusively embodied the obligations of the parties, thus operating to prevent incorporation of the arbitration clause of the Charter Party. In Midland Tar, however, the bill of lading provisions were devoid of detail, and the court found that the bill of lading there effectively incorporated an arbitration clause contained in the Charter Party. That case is similar to the instant case, where the letter of guaranty is in general terms. The Midland Tar court further distinguished Production Steel on the ground that the arbitration clause in the latter case was restricted to the original parties, whereas the arbitration clause before it was not so clearly and unequivocally limited. As we indicated above, the arbitration clause before us is not as specific as that in Production Steel.

Judge Weinfeld has stated the criteria which should be used in determining whether or not an arbitration provision similar to the one in the instant case may be enforced against the original parties only or against subsequent parties as well.

It is true that a charter party provision for arbitration of disputes which is restricted to the immediate parties or limited to disputes 'between the \*\*\* Owners and the Charterers'...

does not bind any but the named persons. On the other hand, an agreement to arbitrate all 'disputes \*\*\* arising out of this charter' binds not only the original parties, but also all those who subsequently consent to be bound by its terms. (footnotes omitted)

Lowry & Co. v. S.S. LeMoyne D'Iberville, 253 F. Supp. 396, 398 (S.D.N.Y. 1966), appeal dismissed, 372 F.2d 123 (2d Cir. 1967). See also Son Shipping Co. v. DeFosse & Tanghe, 199 F.2d 687, 688 (2d Cir. 1952). We believe that Judge Weinfeld's language is directly applicable to the instant case and that "[i]t is not necessary, in order to incorporate by reference the terms of another document, that such purpose be stated in haec verba or that any particular language be used." 253 F. Supp. at 398.

Thus we conclude that the Letter of Guaranty does incorporate the arbitration clause in the contract of affreightment. It thus follows that Cepsa has consented to arbitrate disputes once it has been notified by Nereus of any default by Hideca.

## II. Prematurity of Arbitration.

Cepsa argues that even if it is bound to arbitrate with Nereus, it cannot do so until it has been conclusively determined that Hideca has defaulted. It maintains that this conclusion follows from the proviso in the Letter of Guaranty that it shall only be liable for payments or damages as a result of Hideca's default after receiving written notice that

Hideca is in default. We disagree. We are in accord with the judge in Midland Tar that any ambiguities in the letter of guaranty must be construed "in accordance with the rules generally applied to commercial contracts, in order to glean the intent of the parties from the words they used and the actions they performed in their conduct of the transaction." Midland Tar Distillers, Inc. v. M. T. LOTOS, 362 F. Supp. 1311, 1314 (S.D.N.Y. 1973). In so holding, we do not find Cepsa's interpretation commercially reasonable. If plaintiff's interpretation were correct, Cepsa would never be bound to perform any of the obligations of Hideca until it were first conclusively determined, presumably by arbitration, that Hideca was in default, and until judicial appeals were exhausted. If this procedure were followed, plaintiff's guaranty would be limited effectively to paying damages at some point in the future to the defendant, unless Cepsa were willing to concede that Hideca was in fact in default. We thus conclude that Cepsa's obligations under the Letter of Guaranty came into play as soon as it received the notification from Nereus that Hideca was in default. If it is determined in the arbitration proceedings between plaintiff and defendant that Hideca was not in default, plaintiff will not be required to pay any damages. And if the arbitrators conclude that Hideca was in default, plaintiff is free to attack that finding in a later action by defendant to confirm the arbitra-

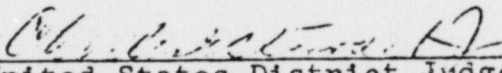
tion award. See Kentucky River Mills v. Jackson, 206 F.2d 111 (6th Cir. 1953), cert. denied, 346 U.S. 887.

III. Injunctive Relief.

Since we find on the merits for the defendant, we need not consider whether injunctive relief is warranted in the instant case.

For the reasons indicated, plaintiff's motions for declaratory and injunctive relief are denied. This opinion shall be considered as findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure.

SO ORDERED.

  
United States District Judge

Dated: New York, N. Y.  
December 18, 1974.

## PLAINTIFF'S NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
COMPANIA ESPANOLA DE PETROLEOS, S.A.

Plaintiff,

- against -

NEREUS SHIPPING, S.A.

Defendant.  
-----x

FILED  
U.S.D.C.  
JAN 17, 1975

12:57 PM

NOTICE OF APPEAL

74 Civ. 5102 (CES)

PLEASE TAKE NOTICE, that COMPANIA ESPANOLA DE PETROLEOS, S.A., plaintiff in this action, 74 Civ. 5102, by its attorneys, Poles, Tublin, Patestides & Stratakis, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum, Decision and Order of the Honorable Charles E. Stewart, Jr., dated December 18, 1974 and filed on December 18, 1974, which denied the plaintiff's motion for injunctive relief.

DATED: New York, New York

January 17, 1975

Respectfully submitted,

POLES, TUBLIN, PATESTIDES &  
STRATAKIS

By

A Member of the Firm

TO: BURKE & PARSONS, ESQS.  
52 Wall Street.  
New York, New York 10005

Attorneys for Plaintiff  
Compania Espanola de Petroleos,  
S.A.  
37 Wall Street  
New York, New York 10005  
212-944-0580

DEFENDANT'S NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff,

- against -

NOTICE OF APPEAL

74 Civ. 5102 (CES)

NEREUS SHIPPING, S.A.,

Defendant.

-----X

Notice is hereby given that NEREUS SHIPPING, S.A., defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum, Decision and Order of the Honorable Charles E. Stewart, Jr., dated March 20, 1975, directing NEREUS SHIPPING, S.A., to arbitrate with HIDROCARBUROS Y DERIVADOS, C.A., and COMPANIA ESPANOLA DE PETROLEOS, S.A., in a consolidated arbitration before five (5) arbitrators, despite the fact that the separate arbitration agreements between NEREUS SHIPPING, S.A., and HIDROCARBUROS Y DERIVADOS, C.A., and between NEREUS SHIPPING, S.A., and COMPANIA ESPANOLA DE PETROLEOS, S.A., each provided for arbitration before a panel of three (3) arbitrators, and in effect dismissing the panel of three (3) arbitrators previously appointed in the

A 110

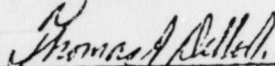
*Defendant's Notice of Appeal*

arbitration between NEREUS SHIPPING, S.A., and COMPANIA ESPANOLA  
DE PETROLEOS, S.A.

Dated: March 25, 1975

BURKE & PARSONS

By:



A Member of the Firm

Attorneys for Nereus Shipping, S.A.  
52 Wall Street  
New York, New York 10005  
(212) 344-1030

**Docket No. 75-7206**

**HIDROCARBUROS y DERIVADOS, C.A.,**  
*Plaintiff-Appellee,*

*against*

**NEREUS SHIPPING, S.A.,**  
*Defendant-Appellant,*

*and*

**COMPANIA ESPANOLA DE PETROLEOS, S.A.,**  
*Defendant-Appellee.*



A 111  
DOCKET ENTRIES

DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	R 23	S	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET VI NUMBER
208-1	75 0463	01 30 75	3	890	1					0858		15 0463

PLAINTIFFS

HIDROCARBUROS Y DERIVADOS, C.A.

DEFENDANTS STEWART, J.

NEREUS SHIPPING S.A. ET ANO  
COMPANIA ESPANOLA DE PETROLEOS, SA

DATE	PROCEEDINGS
01-30-75	Filed complaint and issued summons.
02-05-75	Filed affdvt. and order appointing person to serve process. <del>server- Clerk</del>
02-13-75	Filed affdvt. of service by David A. Robinson -served summons and complaint, and notice of motion upon deft. Nereus Shipping, S.A. on 2-7-75.
02-13-75	Filed notice of motion for preliminary injunction and temporary restraining order ret. 2-19-75.
02-19-75	Filed deft. Nereus Shipping, S.A. affdvt. in opposition to pltf's motion for a preliminary injunction
02-19-75	Filed memo. in support of affdvt. above.
03-03-75	Filed reply brief of deft Nereus Shipping, S.A.
03-03-75	Filed deft Nereus Shipping, S.A. reply affdvt. in opposition to pltf's motion for a preliminary injunction.
03-06-75	Filed pltf. further reply affdvt. in support of motion for a stay.
03-21-75	Filed pltf. affdvt. to respond to certain statements made by T. A. Dillon, Jr. a respondent herein with respect to motion by Hideca for an order staying the
03-21-75	Filed pltf. affdvt. in support of motion for a stay.
03-21-75	Filed pltf. memo. of law in support of motion for preliminary injunction
03-21-75	Filed pltf.'s reply memo. of law in support of motion for a preliminary injunction restraining arbitration
03-21-75	Filed deft. affdvt. in support of preliminary injunction and temporary restraining order.
03-21-75	Filed memorandum in support of proposed order of consolidation
03-21-75	Filed MEMORANDUM and ORDER #42077..Ordered, that the two arbitrations (74 Civ 463 74 Civ. 464) are consolidated for all purpose and all claims of the three parties shall be heard in said consolidated arbitration before one panel of arbitrators; and it is further Ordered, that the arbitration panel who shall hear all claims shall consist of five members one of whom shall be chosen by pltf. Hideca, one chosen by deft. Cepsa, and those three chosen shall choose the remaining two arbitrators, and it is further Ordered, that a copy of this order be served upon the arbitrators appointed in the arbitration previously pending between pltf. and deft. Nereus, and those appointed in the arbitration previously pending between between defendants Nereus and Cepsa. So ordered Stewart, J. m/n
3-26-75	Filed notice of appeal to the U.S.C.A. for the second Circuit from the decision of MEMO 3-20-75 by Respondent Nereus Shipping, S.A. Mailed copies to Donovan, Donovan, Maloof & Walsh. Baker & McKenzie Poles, Tublin. Patestides & Stratakis.
04-08-75	Filed supplemental record on appeal has been certified and transmitted to the U.S.C.A. for the Second Circuit on 4-8-75.

## COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
HIDROCARBUROS Y DERIVADOS, C.A.,

Plaintiff,

- against -

NEREUS SHIPPING, S.A. and  
COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Defendants.

:  
:  
:  
: 75 Civ. 463 (C.E.S.)  
:  
:  
:

: COMPLAINT  
:  
:  
-----X

Plaintiff, Hidrocarburos y Derivados, C.A. by its attorneys, Baker & McKenzie, for its complaint against the defendants, alleges on information and belief as follows:

1. Plaintiff, Hidrocarburos y Derivados, C.A.

("Hideca"), is a Venezuelan corporation with an office and place of business at Av. Fec. de Miranda, Centro Plaza, Caracas, Venezuela.

2. Defendant, Nereus Shipping, S.A. ("Nereus"), is a Liberian corporation with an office and place of business at 35-39 Akti Miaouli, Piraeus, Greece and at 1041 Third Avenue, New York, New York, care of Triton Shipping, Inc.

3. Defendant, Compania Espanola de Petroleos, S.A. ("Cepsa") is a Spanish corporation with an office and place of business at Number 32, Avenida de America, Madrid, Spain.

4. This is an action within the Admiralty and Maritime jurisdiction of this Court as defined by Rule 9(h) of the

Federal Rules of Civil Procedure and as will hereinafter more fully appear.

5. Plaintiff and defendant Nereus entered into a contract of affreightment dated January 27, 1971, New York, New York for the transportation of about 600,000 tons of crude oil and/or dirty petroleum products per year for three years. Defendant Cepsa executed a Letter of Guaranty dated June 24, 1971, Madrid, Spain, as Addendum No. 2 to the contract of affreightment ("Contract of Affreightment").

6. Disputes arose between plaintiff and defendant Nereus with reference to the Contract of Affreightment, and plaintiff, on or about August 23, 1974, by its attorneys, Baker & McKenzie, served a Notice of Arbitration on defendant Nereus, naming Professor Andreas F. Lowenfeld of the New York University School of Law as one of the arbitrators and setting forth its claims.

7. On September 9, 1974 defendant Nereus, by a letter from the attorneys, Burke & Parsons named Lloyd C. Nelson as an arbitrator and set forth its claims.

8. On September 3, 1974 defendant Nereus served a demand for arbitration on defendant Cepsa naming Lloyd C. Nelson as an arbitrator. On September 16, 1974 defendant Cepsa refused this demand. Thereafter Nereus, pursuant to clause 24 of the Contract of Affreightment appointed Manfred W. Arnold as the second arbitrator and the two arbitrators appointed by Nereus chose Harry G. Webber as the third arbitrator.

9. The arbitration between the defendants involves the

same contract, facts and issues as the arbitration between plaintiff and defendant Nereus.

10. The arbitration between the defendants may commence at any time and an award may be rendered and reduced to judgment at any time.

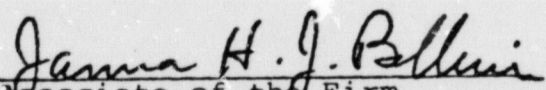
11. If the arbitration between the defendants proceeds before the arbitration between plaintiff and defendant Nereus, the principal parties in interest, plaintiff will suffer irreparable harm.

12. The granting of an injunction herein will not cause undue damage, injury, or hardship to the defendants, but will preserve the status quo between the parties pending a full determination of their rights in the arbitration between plaintiff and defendant Nereus.

WHEREFORE, Plaintiff demands:

1. That the Court issue an injunction preventing and restraining the defendants, their officers, agents, servants, employees, attorneys, and the panel of arbitrators chosen by them from proceeding with and participating in the arbitration between the defendants arising from the contract of affreightment dated January 27, 1971 between plaintiff and defendant Nereus, pending the outcome of the arbitration between plaintiff and defendant Nereus arising from the same Contract of Affreightment.

2. That plaintiff be given such other relief as the Court may deem just and proper.

  
An Associate of the Firm  
Baker & McKenzie  
375 Park Avenue  
New York, New York 10022  
(212) 751-5700

(Verified)

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION AND  
TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
HIDROCARBUROS Y DERIVADOS, C.A.,	:
	:
Plaintiff,	:
	: 75 Civ. 463 (C.E.S.)
- against -	:
	: NOTICE OF MOTION
NEREUS SHIPPING, S.A. and	: FOR PRELIMINARY
COMPANIA ESPANOLA DE PETROLEOS, S.A.,	: INJUNCTION AND
	: TEMPORARY RESTRAINING
Defendants.	: <u>ORDER</u>
-----X	

PLEASE TAKE NOTICE that upon the annexed verified complaint, affidavits of David L. Maloof and Lawrence W. Newman, and Memorandum of Law the undersigned will move this Court before the Honorable Charles E. Stewart, Jr. at Room 2602 of the United States Courthouse, Foley Square, New York, New York on the 19th day of February, 1975, at 9:45 A.M. or as soon thereafter as counsel can be heard, for an order for preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, restraining defendants from proceeding with an arbitration arising out of a contract of affreightment between plaintiff and defendant Nereus Shipping, S.A., for a temporary restraining order pending determination of Plaintiff's motion for preliminary injunction, and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that answering affidavits or

A 116

*Notice of Motion for Preliminary Injunction and  
Temporary Restraining Order*

memoranda, if any, shall be served and filed at least three days  
prior to the return day of this motion.

Dated: New York, New York  
February 7, 1975

Yours, etc.

BAKER & MCKENZIE

BY: Janna H. J. Belkum  
Attorneys for Plaintiff  
375 Park Avenue  
New York, New York 10022  
(212) 751-5700

TO: BURKE & PARSONS  
Attorney for defendant Nereus Shipping, S.A.  
52 Wall Street  
New York, New York 10005

POLES, TUBLIN, PATESTIDES & STRATAKIS  
Attorneys for defendant Compania Espanola de Petroleos, S.A.  
37 Wall Street  
New York, New York 10005

PROPOSED  
PRELIMINARY  
INJUNCTION

ORDERED, that defendants Nereus Shipping, S.A. and Compania Espanola de Petroleos, S.A., their officers, agents, servants, employees, attorneys, and the panel of arbitrators chosen by them be and they hereby are restrained and enjoined from proceeding with or participating in the arbitration between

Proposed Preliminary Injunction

the defendants arising from a contract of affreightment dated January 27, 1971 between plaintiff and defendant Nereus Shipping, S.A., pending the outcome of the arbitration between plaintiff and defendant Nereus Shipping, S.A. arising from said contract of affreightment; provided that plaintiff first give security in the sum of \$ \_\_\_\_\_, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined, such bond to be approved by the Court or the Clerk no later than \_\_\_\_\_, 1975.

Dated: New York, New York  
                    , 1975

United States District Judge

AFFIDAVIT OF DAVID L. MALOOF IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
HIDROCARBUROS Y DERIVADOS, C.A.,  
:  
Plaintiff,  
:  
: 75 Civ. (C.E.S.)  
:  
- against -  
:  
:  
NEREUS SHIPPING, S.A. and  
COMPANIA ESPANOLA DE PETROLEOS, S.A.,  
:  
Defendants.  
:  
-----X

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK)

DAVID L. MALOOF, being duly sworn deposes and says:

1. I am a member of the Bar of the State of New York and of this Court and a member of the firm of Donovan, Donovan, Maloof & Walsh, co-counsel for plaintiff Hidrocarburos y Derivados, C.A. ("Hideca") and make this affidavit in support of plaintiff's motion for a temporary restraining order restraining the defendants from proceeding with a certain arbitration arising out of plaintiff's contract of affreightment with defendant Nereus Shipping, S.A. ("Nereus").

2. Plaintiff and defendant Nereus entered into a contract of affreightment dated January 27, 1971 which provided for the chartering of oil tankers by Hideca from Nereus to carry a total of approximately 600,000 tons of crude oil per year

for three years. A copy of that contract of affreightment ("COA") with the specific terms more fully set forth is annexed as Exhibit A hereto. Attached thereto as addendum No. 2 is a guaranty of Hideca's performance signed by Compania Espanola de Petroleos, S.A. ("Cepsa").

3. During the course of the COA disputes arose between plaintiff and defendant Nereus regarding certain actions taken by both parties and the interpretation of certain contract terms and procedures.

4. Clause 24 of the COA provides for arbitration of disputes, and, on or about August 23, 1974, Baker & McKenzie, counsel for Hideca, served a Notice of Arbitration on defendant Nereus naming as one of the arbitrators Professor Andreas F. Lowenfeld of New York University School of Law and asserting (1) defendant Nereus committed a breach of the entire charter party, (2) defendant improperly withheld from Hideca a vessel which defendant had nominated and Hideca had accepted and expected, (3) defendant improperly and wrongfully obtained a court order purporting to attach certain assets of Hideca in Morocco and (4) defendant improperly and wrongfully invoked the guarantee of third party, Cepsa. The Notice seeks an award of damages as established and a declaration that the charter party was terminated by the actions of Nereus.

5. On September 9, 1974 defendant Nereus by letter to Baker & McKenzie from its attorneys, Burke & Parsons, named Lloyd C. Nelson as an arbitrator and set forth its claims.

6. On September 3, 1974 defendant Nereus served a demand for arbitration on defendant Cepsa naming Lloyd C. Nelson as an arbitrator and on September 16, 1974 defendant Cepsa rejected defendant Nereus' demand for arbitration. Thereafter Nereus pursuant to clause 24 of the contract of affreightment appointed Manfred W. Arnold as the second arbitrator and the two arbitrators appointed by Nereus chose Harry G. Webber as the third arbitrator. The main issue in both arbitrations will be whether Nereus or Hideca is in default of the COA. But Hideca is not a party to the Cepsa arbitration which panel of three arbitrators was chosen, in effect, solely by Nereus.

7. On November 22, 1974 defendant Cepsa by Order to Show Cause and Temporary Restraining Order sought to enjoin the arbitration between Nereus and Cepsa on the grounds that (a) Cepsa was not subject to the arbitration clause of the contract of affreightment, (b) the arbitration between Nereus and Cepsa could only proceed should plaintiff default with respect to its obligations under the contract of affreightment, including the arbitration provision thereof and (c) the panel was improperly constituted, there being no arbitrable dispute between Nereus and Cepsa at the time of its appointment. See Complaint in Compania Espanola de Petroleos, S.A. v. Nereus Shipping, S.A. 74 Civ. 5102 (C.E.S.).

8. Hideca was not a party to that action nor to the order to show cause although Hideca's counsel, Mr. Lawrence W. Newman did submit an affidavit to the Court.

9. The Court by Memorandum dated December 18, 1974 denied defendant Cepsa's motions for declaratory and injunctive relief and found that:

"the Letter of Guaranty does incorporate the arbitration clause in the contract of affreightment. It thus follows that Cepsa has consented to arbitrate disputes once it has been notified by Nereus of any default by Hideca." Memorandum in Compania Espanola de Petroleos, S.A., supra.

In addition Cepsa's contention that its obligation to arbitrate, if any, did not attach until written notice was received that plaintiff had defaulted with respect to its obligations under the contract of affreightment, including the arbitration provision thereof was also denied. The Court thus ruled, that as a matter of law, Cepsa could be compelled to arbitrate. It did not rule, however, on the question of the preferred order of arbitration.

10. We have received from counsel for Cepsa a copy of its Notice of Appeal from the Court's order denying the injunction.

11. Plaintiff Hideca now moves by Order to Show Cause and Temporary Restraining Order for an order enjoining the defendants from proceeding with the Nereus-Cepsa arbitration until an award is rendered in the first arbitration between Hideca and Nereus, the real parties in interest.

12. Failure to stay the second arbitration until the completion of the Hideca-Nereus arbitration will cause plaintiff Hideca to suffer irreparable injury and substantial prejudice.

Nereus intends to proceed as quickly as possible against the guarantor Cepsa before the arbitration panel, two of whose members it chose. If Nereus is allowed to push the second arbitration ahead, Hideca will suffer the substantial risk of the irreparable effect of improper de facto or de jure estoppel as pointed out more fully in plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Preliminary Injunction ("Plaintiff's Memorandum") pp. 2-9.

13. Deponent refers the Court to the Newman affidavit submitted in support of this motion. The response of Mr. Burke to Mr. Newman's suggestion that the arbitrations should be consolidated was a flat "no" because Nereus intends to proceed in the arbitration against Cepsa who they believe is better able to pay and is not interested in the arbitration with Hideca.

14. Plaintiff Hideca may be liable to any award paid by its Guarantor Cepsa without an opportunity to have its claims heard by the arbitration panel it instituted first by appointing Andreas F. Lowenfeld, nor has it any reason to believe that Cepsa can or will vigorously defend and assert Hideca's claims. This possibility of irreparable prejudice can be prevented by requiring Nereus to first arbitrate with plaintiff Hideca, the real party in interest. Thus all claims of plaintiff and defendant Nereus can be fully and vigorously heard before an impartial panel with no prejudice to either Hideca or Nereus. See Plaintiff's Memorandum pp. 2-9.

15. Nereus is, in effect, splitting its one cause of action by pressing its case against Cepsa separately from its case against Hideca.

16. Even though Plaintiff Hideca and defendant Nereus have agreed to arbitrate their disputes, the Court now on motion by Hideca may exercise its power to insure that both parties in interest have a genuine opportunity to be heard fairly and fully. See Plaintiff's Memorandum pp. 4-9.

17. It is within the discretionary power of the Court to issue an injunction staying the Nereus-Cepsa arbitration pending the outcome of the arbitration instituted by Hideca against Nereus, especially since the arbitration between Hideca and Nereus is between the primary parties and will definitely decide all the issues concerning the disputes between the parties and the alleged breach of the charter party by either party.

18. Failure to grant an injunction may result in inconsistent awards. Courts have long recognized the desirability of preventing inconsistent results when two proceedings are substantially similar and inconsistent results would impair the rights of the parties. See Plaintiff's Memorandum pp. 10-11. There is no question that the two arbitrations involving the Nereus-Hideca contract of affreightment relate to the same set of facts. There are more issues to be decided in the Hideca-Nereus arbitration which was instituted first and should be concluded first.

19. Failure to grant an injunction may result in

unnecessary litigation, either by court action or certainly by arbitration. If the Cepsa-Nereus arbitration is permitted to proceed, regardless of the outcome, the Hideca-Nereus arbitration must also go ahead to determine Hideca's claims against Nereus which will not have been heard. Nor would the Cepsa arbitration determine Nereus' claims against Hideca which arose prior to the notification sent to Cepsa of Hideca's alleged defaults. However, if the first arbitration between Hideca and Nereus proceeds first then all issues will be arbitrated and the second arbitration will be unnecessary. See Plaintiff's Memorandum pp.10-12.

20. I have given notice of plaintiff's motion for a restraining order and application for an order to show cause to Mr. Thomas Dillon of Burke & Parsons, Esq., attorneys for defendant Nereus Shipping, Inc. by telephone on January 30, 1975 and to Patrick V. Martin of Poles, Tublin, Patestides & Stratakis, attorneys for defendant Compania Espanola de Petroleos, S.A. ("Cepsa") by telephone on January 30, 1975. Messrs. Burke & Parsons and Messrs. Poles, Tublin, Patestides & Stratakis have consented to appear for argument on plaintiff's motion for a preliminary injunction at such time as fixed by the Court.

21. No prior application for the relief sought herein has been made by or on behalf of the applicant to this or any other Court.


22. The applicant is proceeding by Order to Show Cause

*Affidavit of David L. Maloof*

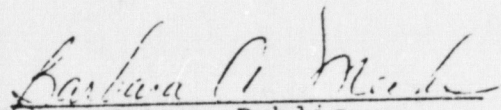
to obtain a restraining order rather than proceeding by motion because time would not permit the making of a motion upon the required notice and unless the relief sought herein is granted and a restraining order made and served today, the arbitration that the applicant seeks to enjoin may proceed at any time to the prejudice of the applicant.

23. Upon the appointment by this Court of the third arbitration, Hideca intends to proceed promptly with its arbitration against Nereus.

FOR THE FOREGOING REASONS, Hideca respectfully requests this Court to grant the relief sought in order to avoid Hideca's rights being determined in a proceeding to which it is not a party, and which proceeding cannot determine all the issues involved.

  
DAVID L. MALOOF

Sworn to before me this  
30<sup>th</sup> day of January, 1975

  
Notary Public

BARBARA A. MEEKS  
Notary Public, State of New York  
No. 24-4000346  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 30, 1975

A 127

EXHIBIT A--CONTRACT OF AFFREIGHTMENT ANNEXED TO  
AFFIDAVIT OF DAVID L. MALOOF

Identical to Exhibit A annexed to Affidavit of  
Thomas A. Dillon, Jr. printed herein at pages A48  
to A54.

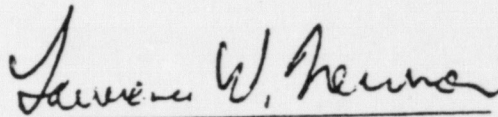
AFFIDAVIT OF LAWRENCE W. NEWMAN IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

KINGDOM OF NORWAY )  
 ) ss:  
 )  
CITY OF OSLO  
EMBASSY OF THE }  
UNITED STATES OF AMERICA }

Lawrence W. Newman, being duly sworn, deposes and says .:

1. I am a member of the Bar of this Court and of the firm of Baker & McKenzie, counsel to the plaintiff, Hidrocarburos y Derivados, C.A. (Hideca) in this matter and in the arbitration which it has brought against Nereus Shipping, S.A. (Nereus).
2. On Monday afternoon, January 7th, 1974, I telephoned Raymond Burke, Sr., the senior partner of Burke & Parsons, counsel to Nereus in the arbitration pending against it. In that conversation, which lasted about five minutes, I told Mr. Burke that it seemed sensible and practical that the claim in the arbitration commenced by Nereus against Compania Espanola de Petroleos, S.A. (Cepsa) be heard by the same panel of arbitrators on the claims involved in the Hideca arbitration against Nereus, the arbitrators before whom all such disputes would be heard to be acceptable to all parties concerned. I pointed out to Mr. Burke that to have the same legal questions and the same facts as they relate to the same parties be heard by two different arbitration panels seemed illogical, wasteful and potentially to lead to inconsistent awards.

Mr. Burke told me that his position was that he intended to proceed with Nereus in the arbitration against Cepsa and was not interested in proceeding with the arbitration between Hideca and Nereus because he regarded Cepsa as better able to pay an award against than was Hideca, none of whose assets Nereus has been successful attaching. Mr. Burke told me that, therefore, he was rejecting my suggestion of a joint arbitration.

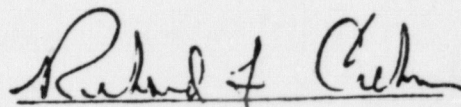


LAWRENCE W. NEWMAN

on to before me

17th

day of January, 1975.



AFFIDAVIT OF THOMAS A. DILLON, JR. IN OPPOSITION TO MOTION  
FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

HIDROCARBUROS Y DERIVADOS, C.A.,

75 Civ. 463 (CES)

Plaintiff,

-against-

NEREUS SHIPPING, S.A. and  
COMPANIA ESPANOLA DE PETROLEOS, S.A.,

AFFIDAVIT IN OPPOSITION  
TO PLAINTIFF'S MOTION  
FOR A PRELIMINARY  
INJUNCTION

Defendants.

----- x

THOMAS A. DILLON, JR., being duly sworn, deposes and  
says:

1. I am an attorney duly admitted to practice before  
this Honorable Court and a member of the firm of Burke & Parsons,  
attorneys for the Defendant NEREUS SHIPPING, S.A. ("Nereus")  
and am familiar with all proceedings heretofore had herein.

2. This affidavit is submitted in opposition to the  
motion of Plaintiff dated February 7, 1975, for a preliminary  
injunction restraining Nereus from proceeding with an arbitration  
against Compania Espanola de Petroleos, S.A. ("Cepsa") pursuant  
to the arbitration clause of a Contract of Affreightment dated  
January 27, 1971 (hereinafter referred to as the "Charter").

3. By the decision of this Court dated December 18,  
1974 (a copy of which is annexed hereto as Exhibit 1), this  
Court denied a motion by Cepsa for a preliminary injunction

restraining the holding of arbitration hearings in the dispute between Nereus and Cepsa. Attorneys for Plaintiff (hereinafter sometimes referred to as "Hideca"), appeared in the action by Cepsa for a preliminary injunction and argued before the Court in support of such injunction. Annexed hereto and made a part hereof as Exhibit 2 is a copy of the affidavit of Plaintiff's attorney, Lawrence W. Newman, Esq., dated November 27, 1974, which concluded as follows:

"10. We submit that if plaintiff is obliged to arbitrate with defendant that arbitration should be stayed until the arbitration between Hideca and the defendant has been completed."

4. By its motion herein for a preliminary injunction to restrain the holding of arbitration hearings between Nereus and Cepsa, Plaintiff is seeking the same relief which was denied when previously requested by both Cepsa and Hideca, despite the fact that no timely application for reargument was made from the Court's decision dated December 18, 1974.

5. The Charter, a true copy of which is annexed as Exhibit A to Plaintiff's Moving Affidavit, provided for the carriage between ports specified therein of a total of 1,800,000 long tons of cargo, 10% more or less at Owner's (i.e., Defendant's) option over a three (3) year period commencing between November 15, 1971 and January 15, 1972. Typewritten clause 1 of the Charter provided as follows:

"This Contract of Affreightment will remain in full force and effect for a total quantity of 600,000 long tons ten (10) percent more or less

*Affidavit of Thomas A. Dillon, Jr.*

per year at Owner's option fairly evenly spread for a period of three (3) years."

6. The three year period of the Charter commenced on December 24, 1971, when the first Vessel tendered to load the first cargo under the Charter. Prior to the refusal of Cepsa to perform its obligations under the Charter as hereinafter more fully stated, the total quantity carried under the Charter was 1,330,030 long tons, and the quantity carried up to July 12, 1974 in the last year of the Charter, was 209,751 long tons.

7. The entire Charter consisted of a printed form of Essovoy 1969 Charter with 10 typewritten clauses, together with three Addenda. The printed form of the Charter indicated that it was between Nereus and Hideca. However, Addendum No. 2 of the Charter, which was signed by Cepsa, provided as follows:

"In connection with the contract of affreightment, embodied in the Charter Party drawn up at New York and dated 27th January, 1971, between Nereus Shipping, S.A. as Agents for Owners (hereinafter called the Owner), and Hidrocarburos y Derivados, C.A. (HIDECA) (hereinafter called the Charterer), being that the Charterer shall use the tonnage contracted under the present Charter Party for the transportation, during the period of three years commencing November 1971/January 1972, of crude oil under a CIF contract to be signed with Compania Espanola de Petroleos, S.A. (CEPSA) we, Compania Espanola de Petroleos, S.A., hereby agree that, should HIDECA default in payment or performance of its obligations under the Charter Party, we will perform the balance of the contract and assume the rights and obligations of HIDECA on the same terms and conditions as contained in the Charter Party. Provided, however, that Compania Espanola de Petroleos, S.A. shall not be responsible for any payments or damages as a result of HIDECA's default, prior to receiving written notice from the Owner advising

us that HIDECA is in default, and calling upon us to assume performance of the Charter Party."

8. So long as the freight rate of the Charter, which was Worldscale 130, was less than the prevailing market freight rate, Hideca for a period of approximately two years, performed its obligations under the Charter. During said period, 12 voyages were performed and Hideca promptly paid freight, demurrage and expenses as required by the Charter terms. However, after the Arab Oil Embargo on October 20, 1973, the market freight rates began to decline until by June and July 1974 the market freight rate was approximately Worldscale 40.

9. As indicated by the affidavits of Mr. Demetrios Xistris, President of Triton Shipping, Inc., a New York corporation which acted as agent for Nereus, annexed hereto and referred to hereinafter, Hideca failed to pay (i) increased War Risk Insurance Premiums in the amount of \$15,000.00 and demurrage of \$68,529.18 for voyage 14, which was completed on February 21, 1974; (ii) deviation expenses and demurrage of \$173,387.73 for voyage 15, which was completed on March 16, 1974; and (iii) demurrage in the amount of \$143,797.20 for voyage 16, which was completed on April 10, 1973. However, Nereus did not call upon Cepsa to perform the balance of the Charter as provided in Addendum No. 2, but instead demanded payment of these sums from Hideca and received assurances that they would be paid.

10. However, when the 17th voyage was completed on

July 12, 1974 with the delivery of 64,164 long tons of oil at Mohammedia, Morocco, Hideca defaulted in the payment of freight in the amount of \$770,424.17 and demurrage of \$61,432.29. The Charter provided in Part II, clause 2 that freight was to be paid "without discount upon delivery of cargo at destination". However, Hideca has never paid the freight for the delivered cargo.

11. After the fundamental breach of the Charter by Hideca in failing to pay freight for voyage 17, Hideca indicated that it would pay a sum into an escrow account to be opened in the joint names of "Burke & Parsons and Baker & McKenzie as Escrow Agents", attorneys for Nereus and Hideca, respectively. Such account was opened in the First National City Bank, but Hideca defaulted in its undertaking to make the payment. Annexed hereto and made a part hereof as Exhibit 3 is a copy of the Bank's statement for the joint escrow account showing a \$0000 balance.

12. Following the failure of Hideca to pay the sums due for voyages 13 through 17, including the freight for the last voyage, and its further failure to pay the sums required into the joint escrow account, on July 24, 1974, Nereus sent notice to Cepsa calling upon Cepsa to perform the balance of the Charter as required by Addendum No. 2 (a copy of which is annexed hereto and made a part hereof as Exhibit 4).

13. Since Cepsa by the terms of Addendum No. 2 was

not liable for the obligations of Hideca prior to the notice of July 24, 1974, Nereus commenced an action in this Court, 74 Civ. 3235, pursuant to Section 8 of the Federal Arbitration Act, 9 U.S.C. §8, to obtain security by attachment for claims it had which were arbitrable with Hideca. Copies of this Court's Order of Attachment dated July 26, 1974, together with all supporting affidavits and exhibits including the affidavit of Mr. Demetrios Xistris dated July 26, 1974 are annexed hereto and made a part hereof as Exhibit 5. The affidavit of Mr. Xistris dated November 25, 1974 submitted in opposition to Cepsa's motion for a preliminary injunction is also annexed hereto and made a part hereof as Exhibit 6.

14. Nereus was unable to locate any property or assets of Hideca in this country to attach. Consequently, Nereus is in the position where it has no security for its out of pocket claims against Hideca, which will be arbitrated between the parties.

15. Nereus also attempted, without apparent success, to attach a payment due Hideca in Casablanca in the amount of the unpaid freight and on August 14, 1974, delivered by hand to the chartering broker Long, Quinn & McAleer, a letter demanding arbitration with Hideca stating, in part, as follows:

"In accordance with the terms of the COA Nereus hereby demands arbitration and nominates Mr. Lloyd C. Nelson, Orion & Global Chartering, Inc., 29 Broadway, New York, New York, as an arbitrator. Please promptly advise us of the name of the arbitrator appointed by you so that the two so chosen may select the third arbitrator."

The text of Nereus' letter demanding arbitration was sent by telex by the brokers to Hideca on August 14, 1974 and Hideca on the telex acknowledged receipt. Copies of Nereus' letter and the telex of the broker are annexed hereto and made a part hereof as Exhibit 7.

16. Hideca did not reply to Nereus' demand and nomination of an arbitrator. Meanwhile, Nereus was attempting to get Cepsa to perform the balance of the Charter as required by Addendum No. 2. On August 2, 1974, Defendant through the chartering broker sent a telex message to Plaintiff nominating the MAJESTIC as the 18th Vessel to perform under the Charter (a true copy of which is annexed hereto as Exhibit 8) stating as follows:

"We have been advised by Nereus Shipping S.A. that under its guarantee with respect to the Hideca COA dated January 27, 1971 that due to the default of Hideca, Nereus has exercised its rights under the guarantee and has called upon you to perform the balance of the COA. Accordingly on behalf of Nereus we hereby give you thirty days notice of a definite nomination of the "MAJESTIC" E.T.A. P.G. September 7th, 1974."

17. On August 6, 1974, Cepsa rejected Nereus' nomination of the MAJESTIC and on August 9, 1974 sent to Nereus a telex message (a true copy of which is annexed hereto as Exhibit 9) stating as follows:

"We have received from Longtanker NYK a telex dated August 2, 1974 by which such firm on behalf of Nereus thereby gives Cepsa thirty days notice of a definitive nomination of the MAJESTIC ETA PG September 7th. Since it is

far from clear to us that you have properly invoked the guarantee before we respond to the aforesaid nomination we must receive from you adequate assurance that you will hold us harmless from any damages or losses we may incur as a result of accepting that nomination in the event that you have improperly invoked the guarantee and we are not obliged to perform Hideca's obligations under the said contract of affreightment. Please advise us as to what guarantee you will provide protecting us against such damages and losses."

18. After several exchanges of telex messages concerning Cepsa's request quoted above for a guaranty to be furnished by Nereus in which Nereus pointed out that no such guaranty was required under the terms of Addendum No. 2 to the Charter, on August 16, 1974 Nereus advised Cepsa as follows:

"Nereus is agreeable to furnish you with a bank guarantee to be issued by a European branch of First National City Bank or its correspondent Bank. With respect to details of execution Mr. Raymond J. Burke will be arriving Monday August 19th at Madrid via TWA Flight 904 at 0800 hours and he will contact you on arrival."

19. Following the meeting in Spain referred to in the message quoted above, Cepsa refused to perform the balance of the Charter as required by Addendum No. 2 thereof despite the fact that Nereus offered a bank guaranty to secure Plaintiff with respect to any possible damages by reason of such performance. Thereafter, Mr. Raymond J. Burke, as attorney for Nereus, sent a telex dated August 22, 1974 to Cepsa (a true copy of which is annexed hereto as Exhibit 10) stating, in part, as follows:

"In the presence of Messrs. Pardo, Miret, Briggs and the writer, Mr. Assens confirmed at the meeting on Wednesday morning that Cepsa had agreed on Tuesday to perform the balance of the

Charter Party and furnish cargoes in the aggregate amount of 367,240 long tons of cargo. However, after apologizing, Mr. Assens said Cepsa's decision as of Wednesday morning was to refuse to ship any cargo under the Charter Party since Cepsa did not know whether Hideca was or was not in default under the Charter Party.

\* \* \*

"By virtue of Addendum No. 2 of the Charter Party, Cepsa is a party to that Charter with the obligation to perform following notice in accordance with its terms. Cepsa was and is a party to the Charter Party and by Addendum No. 2 clearly agreed to be substituted in the place of Hideca for the balance thereof. Since Cepsa now has refused to perform the balance of the Charter Party, this matter must now be resolved by arbitration as provided in the Charter Party. Accordingly on behalf of Nereus, we hereby put Cepsa on notice that its refusal to accept the nomination of the MAJESTIC and ATHENIC and its assertion that it will not perform the balance of the Charter Party constitute a material breach of the Charter Party for which Nereus will hold it liable in damages at Three and One-Half Million Dollars as near as can be presently ascertained. Nereus further demands arbitration with Cepsa under the Charter Party and hereby nominates Mr. Lloyd C. Nelson, Orion and Global Chartering Co. Inc., 29 Broadway, New York, New York USA as arbitrator."

20. Although Hideca disregarded Nereus' demand for arbitration dated August 14, 1974, on August 23, 1974 after (i) Cepsa had refused to perform the balance of the Charter despite Nereus' willingness to give Cepsa a bank guaranty against loss and (ii) Nereus had demanded arbitration with Cepsa concerning its obligation to perform the balance of the Charter, Messrs. Baker & McKenzie, as attorneys for Hideca, served a notice of arbitration on attorneys for Nereus. Copies of the

notice of Messrs. Baker & McKenzie dated August 23, 1974 and the reply of Burke & Parsons are annexed hereto and made a part hereof as Exhibit 11.

21. Thereafter, on August 30, 1974 (i.e., 8 days after Nereus' demand to arbitrate with Cepsa and 7 days after Hideca's belated action concerning arbitration), Cepsa replied to Mr. Burke by telex (a true copy of which is annexed hereto as Exhibit 12) stating, in part, as follows:

"We have been advised by Hideca that they are not in default and therefore Nereus has no right to demand performance of the COA from us. In view of your dispute with Hideca you must first obtain a judgment in your favor before seeking to enforce guaranty."

22. No arbitration panel was completed for the arbitration between Nereus and Hideca because the arbitrator appointed by Hideca would not agree to the appointment of a third arbitrator, who was familiar with shipping and charter parties. Meanwhile, the arbitration panel in the dispute with Cepsa concerning performance of the balance of the Charter scheduled hearings for November 21, 1974. Despite the fact that your deponent advised attorneys for Cepsa by a hand delivered letter dated November 4, 1974 that hearings were scheduled for November 21, 1974, Cepsa waited 17 days until the date of the arbitration hearings to apply for the order to show cause which temporarily restrained the arbitration and required postponement of the hearings.

23. Your deponent respectfully submits that the

foregoing history of the actions by Cepsa and by Plaintiff as well as the legal authorities cited in Nereus' Memorandum in Opposition clearly indicate that the interest of fairness and justice require that Plaintiff's motion for a preliminary injunction, which is nothing more than an attempt by a party without available assets to indirectly obtain reargument of this Court's prior decision so as to interject itself between Nereus and the solvent party, Cepsa, be denied.

---

Thomas A. Dillon, Jr.

Sworn to before me this  
16th day of February, 1975.

---

EXHIBIT 1--MEMORANDUM OF STEWART, D.J. ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

Identical to Memorandum-Opinion of Stewart, J.  
printed herein at pages A99 to A107.

EXHIBIT 2--AFFIDAVIT OF LAWRENCE W. NEWMAN ANNEXED  
TO AFFIDAVIT OF THOMAS A. DILLON, JR.

Identical to Affidavit of Lawrence W. Newman  
printed herein at pages A95 to A98.

EXHIBIT 3--BANK'S STATEMENT FOR JOINT ESCROW ACCOUNT  
ANNEXED TO AFFIDAVIT OF THOMAS A. DILLON, JR.

ACCOUNT OF

BURKE AND PARSONS BAKER AND  
MCKENZIE AS FISCOW AGENTS  
52 WALL STREET  
NEW YORK NY 10005

BRANCH  
399 7

ACCOUNT NO  
00108089  
07  
873



33

C

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS

ICE R	DEBIT AMOUNT	ID	REFERENCE NUMBER	DEBIT AMOUNT	ID	REFERENCE NUMBER	CREDIT AMOUNT	ID	DATE	DAILY BALANCE
BALANCE BROUGHT FORWARD									09 03	00
EXHIBIT 3										
TS	00	TOTAL \$ CHECKS	00	TOTAL \$ CREDITS	00	DATE RENDERED 09 30 74				
ITS	0	NUMBER CHECKS	0	NUMBER CREDITS	0	LAST AMOUNT ABOVE IS YOUR FINAL BALANCE ON DATE RENDERED				

PLEASE INFORM US IMMEDIATELY OF ANY EXCEPTION(S) TAKEN BY YOU, GIVING FULL DETAILS AND ACCOUNT NUMBER  
(Exemption from presentation of D.C. 100 is not required)

EXHIBIT 4--NOTICE-TELEX DATED JULY 24, 1974 ANNEXED  
TO AFFIDAVIT OF THOMAS A. DILLON, JR.

Identical to Exhibit 2 annexed to Affidavit of  
Thomas A. Dillon, Jr. printed herein at page A55.

EXHIBIT 5--ORDER OF ATTACHMENT AND SUPPORTING AFFIDAVITS  
ANNEXED TO AFFIDAVIT OF THOMAS A. DILLON, JR.

Identical to Exhibit 3 annexed to Affidavit of Thomas  
A. Dillon, Jr. printed herein at pages A56 to A66.

EXHIBIT 6--AFFIDAVIT OF DEMETRIOS XISTRIS DATED NOVEMBER  
25, 1974 ANNEXED TO AFFIDAVIT OF THOMAS A.  
DILLON, JR.

Identical to Exhibit 4 annexed to Affidavit of Thomas  
A. Dillon, Jr. printed herein at pages A67 to A69.

EXHIBIT 7--LETTER DATED AUGUST 14, 1974 AND TELEX ANNEXED  
TO AFFIDAVIT OF THOMAS A. DILLON, JR.

# FILE COPY

August 14, 1974  
\*BY HAND

Long, Quinn & McAleer  
375 Park Avenue  
New York, N. Y.

Attention: Mr. J. McAleer

Gentlemen:

On behalf of Nereus Shipping, S.A. we would appreciate your sending the following telex to Hideca and provide us with a confirmation copy of the outgoing message:

"WE REFER TO YOUR TELEX DATED AUGUST 9 REGARDING THE NEREUS/HIDECA COA.

1. THE WRITTEN RECORD AMONG THE PARTIES, I.E., CEPASA, NEREUS AND HIDECA, IS CONTRARY TO THE DEFENSE ASSERTED BY YOUR LAWYER THAT THE COA IS CANCELLED.

2. THE RECORD IS CLEAR THAT YOUR ATTORNEY SUGGESTED THE COA WAS CANCELLED WHEN IN FACT HE WAS INFORMED THAT FURTHER PERFORMANCE BY HIDECA WAS NOT CONTEMPLATED SINCE NEREUS HAD INVOKED THE PORTIONS OF THE GUARANTY (WHICH PROVIDED FOR CEPASA TO PERFORM THE BALANCE OF THE COA) FOLLOWING THE DEFAULT OF HIDECA.

3. AT THE PRESENT TIME NEREUS IS NEGOTIATING WITH CEPASA TO FURNISH CEPASA A GUARANTY BECAUSE HIDECA HAS ASSERTED THAT IT IS NOT IN BREACH OF CONTRACT. HIDECA'S POSITION AS A LITIGANT IS UNDERSTANDABLE (THOUGH NOT TENABLE) SINCE ONE PARTY TO A DISPUTE DOES NOT EXPECT THE OTHER PARTY TO ADMIT ITS LIABILITY. OTHERWISE THERE WOULD BE NO DISPUTE. HOWEVER, BECAUSE OF THE SPECIAL SITUATION IN WHICH THE GUARANTOR HAS AN OBLIGATION TO PERFORM THE BALANCE OF THE COA, NEREUS WANTS IT CLEARLY UNDERSTOOD THAT IT CONSIDERS HIDECA FULLY LIABLE UNDER THE COA FOR ANY LOSSES OR DAMAGES WHICH NEREUS MAY SUFFER UNTIL THE ENTIRE CONTRACT HAS BEEN PERFORMED. THEREFORE SHOULD CEPASA NOT PERFORM THE BALANCE OF THE COA NEREUS SHALL HOLD HIDECA AND CEPASA JOINTLY AND SEVERALLY LIABLE FOR THE UNPERFORMED PORTION OF THE COA.

.../...

Long, Quinn &amp; McAleer

August 14, 1974

2

## FILE COPY

4. NEREUS REJECTS HIDECA'S CLAIM REGARDING THE "SCENIC" WHICH OBVIOUSLY IS AN AFTERTHOUGHT TO LEND JUSTIFICATION FOR HIDECA'S WRONGFUL BREACH OF CONTRACT. A CLAIMANT WITH A LEGITIMATE CLAIM FOR OVER A MILLION DOLLARS WOULD NOT WAIT MORE THAN A YEAR TO ASSERT IT AND THEN ONLY WHEN IT IS ON THE EVE OF ARBITRATION FOR ITS OWN BREACH OF CONTRACT.

5. NEREUS FINDS IT EXTREMELY DIFFICULT TO UNDERSTAND THE REASONING THAT WOULD IMPEL HIDECA TO SUGGEST THAT THE ACTION TAKEN BY NEREUS WAS DICTATED BY ANYTHING BUT THE WRONGFUL BREACH OF CONTRACT BY HIDECA.

6. REGARDING HIDECA'S SO-CALLED DAMAGES ARISING FROM THE ATTACHMENT OF HIDECA'S FUNDS IN CASABLANCA, NEREUS REMINDS HIDECA THAT AN ESCROW AGREEMENT WAS CONCLUDED BY THEIR RESPECTIVE ATTORNEYS TO CAUSE THE RELEASE OF THE FUNDS BUT HIDECA FAILED EVEN IN THIS RESPECT TO MAKE THE DEPOSIT AS IT HAD PROMISED SO TO DO. NEVERTHELESS NEREUS STILL IS WILLING TO HAVE HIDECA DEPOSIT IN ESCROW FUNDS TO SECURE THE PAYMENT OF AN ARBITRATION AWARD AND CAUSE THE RELEASE OF THE FUNDS IN CASABLANCA.

7. IN ACCORDANCE WITH THE TERMS OF THE COA NEREUS HEREBY DEMANDS ARBITRATION AND NOMINATES MR. LLOYD C. NELSON, ORION & GLOBAL CHARTERING, INC., 29 BROADWAY, NEW YORK, NEW YORK, AS AN ARBITRATOR. PLEASE PROMPTLY ADVISE US OF THE NAME OF THE ARBITRATOR APPOINTED BY YOU SO THAT THE TWO SO CHOSEN MAY SELECT THE THIRD ARBITRATOR.

TRITON SHIPPING, INC.  
ON BEHALF OF  
NEREUS SHIPPING, S.A."

Thank you for your cooperation.

Very truly yours,

TRITON SHIPPING, INC.  
on behalf of  
NEREUS SHIPPING, S.A.

WS:em

W. Stewart

\* This was written & delivered by hand as TWK was out of order.

A 146

Exhibit 7 Annexed to Affidavit of Thomas A. Dillon, Jr.

Mr. W. Stewart

*With the Compliments*

of

Long, Quinn & McMeer Co., Inc.

Telephone No.

212-751-4550

375 Park Ave.

New York 10022

157-4 AUG 14 PM 2:09

sent to B & P  
8/23

1990

101-1050 NYL AC 10/74

Q7: - Mr. COOPER: TUDMAN

DATE BILL: LETTER RECEIVED TODAY FROM OLIVER:

1. A SAMPLE OF FAREWELL SHIPPING, S.A. WE WOULD APPRECIATE YOUR  
SENDING THE FOLLOWING TALENTS TO RIPOSA AND PROVIDE US WITH A  
PHOTOGRAPH COPY OF THE OUTLINE OF THE CASES:

~~CONFIDENTIAL~~

7. The Plaintiff claims that your attorney neglected the GSA and collected when in fact he was informed that further performance by Hisea was not contemplated since Kellus was involved. The failure of the surety (which provided for GSA to perform in the event of the GSA) following the default of Hisea.

5. AT THE PRESENT TIME, REEDS, IS BE OFFERING WITH OFFER TO  
REEDS, OFFER A GUARANTY BECAUSE REEDS HAS ASSERTED THAT IT IS  
NOT A POLICY OF CONTRACT. REEDS'S POSITION AS A LITIGANT IS  
UNFAVORABLE (THOUGH NOT TO REEDS) SINCE ONE PARTY TO A CONTRACT  
WILL NOT LET THE OTHER PARTY TO LET IT ITS LIABILITY. OFFER  
THAT WILL BE A POLICY. REEDS, OFFER, OFFER, OFFER, OFFER

... THEREFORE SHOULD OFFER NOT PERFORM THE DUTY

Exhibit 7 Annexed to Affidavit of Thomas A. Dillon, Jr.

THE COA. SHALL HOLD HIDECA AND JENSEN JOINTLY AND SEVERALLY  
LIABLE FOR THE UNPERFORMED PORTION OF THE COA.

4. HIDECA REJECTS HIDECA'S CLAIM REGARDING THE "COE 10"  
WHICH OBVIOUSLY IS A LATE AFTERTHOUGHT TO LEAD JUSTIFICATION FOR  
HIDECA'S ALLEGED BREACH OF CONTRACT. A CLAIMANT WITH A LEGIT  
CLAIM FOR OVER A BILLION DOLLARS WOULD NOT WAIT MORE THAN 2 YEARS  
BEFORE IT ALLEGES ONLY WHEN IT IS ON THE EVE OF ARBITRATION  
TO REOPEN THE CONTRACT.

ALL WORK ON THE COA SHALL BE A CONTRACT BY HIDECA

THE COA'S SO-CALLED "COE 10" IS A LATE AFTERTHOUGHT TO LEAD  
JUSTIFICATION FOR HIDECA'S ALLEGED BREACH OF CONTRACT. A CLAIMANT  
WITH A LEGIT CLAIM FOR OVER A BILLION DOLLARS WOULD NOT WAIT  
MORE THAN 2 YEARS BEFORE IT ALLEGES ONLY WHEN IT IS ON THE EVE  
OF ARBITRATION TO REOPEN THE CONTRACT. HIDECA'S CLAIM IS A  
LATE AFTERTHOUGHT TO LEAD JUSTIFICATION FOR HIDECA'S ALLEGED  
BREACH OF CONTRACT. A CLAIMANT WITH A LEGIT CLAIM FOR OVER A  
BILLION DOLLARS WOULD NOT WAIT MORE THAN 2 YEARS BEFORE IT  
ALLEGES ONLY WHEN IT IS ON THE EVE OF ARBITRATION TO REOPEN  
THE CONTRACT.

IT IS REQUESTED WITH THE TERMS OF THE COA THAT HIDECA  
SHALL BE ARBITRATED AND MONITORED BY LLOYD S. DILLON,  
JUNIOR, OF NEW YORK, N.Y. AS ARBITRATOR, NEW YORK, N.Y.  
PLEASE PROMPTLY ADVISE US OF THE RESULTS OF THE ARBITRATION.  
PLEASE PROMPTLY ADVISE US OF THE RESULTS OF THE ARBITRATION.

THOMAS A. DILLON, JR., INC.  
OF NEW YORK, N.Y.  
THOMAS A. DILLON, JR., INC.

THANK YOU FOR YOUR COOPERATION.  
THOMAS A. DILLON, JR.  
THOMAS A. DILLON, JR.  
THOMAS A. DILLON, JR.  
THOMAS A. DILLON, JR.  
THOMAS A. DILLON, JR.

THOMAS A. DILLON, JR.

WILL RECV THANKS DIEL

254104 SHELTON DR  
33201 HIDECA

A 148

Exhibit 7 Annexed to Affidavit of Thomas A. Dillon, Jr.

10-171A-128-17K AUG 14/74

ATTN: L015

FILE EXISTING COPY  
ALCC PG/ALST ANY AUGUST

206170 07/20/74 UN  
0051 NILECAO  
0010.0

A 149

EXHIBIT 8--TELEX DATED AUGUST 2, 1974 ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

Identical to Exhibit 5 annexed to Affidavit of  
Thomas A. Dillon, Jr. printed herein at page A70.

EXHIBIT 9--TELEX DATED AUGUST 9, 1974 ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

Identical to Exhibit 6 annexed to Affidavit of  
Thomas A. Dillon, Jr. printed herein at page A71.

EXHIBIT 10--TELEX DATED AUGUST 22, 1974 ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

Identical to Exhibit 7 annexed to Affidavit of  
Thomas A. Dillon, Jr. printed herein at pages A72  
to A73.

EXHIBIT 11--NOTICE OF ARBITRATION (HIDECA TO NEREUS)  
ANNEXED TO AFFIDAVIT OF THOMAS A. DILLON, JR.

Identical to Exhibit C annexed to Affidavit of  
Patrick V. Martin printed herein at pages A17 to A18.

EXHIBIT 12--TELEX DATED AUGUST 30, 1974 ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

Identical to Exhibit 8 annexed to Affidavit of  
Thomas A. Dillon, Jr. printed herein at page A74.

REPLY AFFIDAVIT OF DAVID L. MALOOF IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

HIDROCARBUROS Y DERIVADOS, C.A.,

Plaintiff,

75 Civ. 463 (CES)

- against -

NEREUS SHIPPING, S.A. and  
COMPANIA ESPANOLA DE PETROLEOS,  
S.A.,

REPLY AFFIDAVIT  
IN SUPPORT OF  
PLAINTIFF'S  
MOTION FOR A STAY

Defendants.

-----x

STATE OF NEW YORK )  
                                  ss.  
COUNTY OF NEW YORK)

DAVID L. MALOOF, being duly sworn, deposes and says upon  
information and belief:

I received the opposing affidavit of Mr. Thomas A. Dillon, Jr.  
at or about 5:00 P.M. on February 19, 1975.

In his affidavit in opposition to plaintiff's motion for a stay, Mr.  
Dillon attempts to beguile this Court by an ill conceived and partisan  
dissertation of the merits of the various claims which will be the subject  
of arbitration. These comments have no place on this motion; they are  
completely irrelevant. The affidavit of counsel and of Mr. Demetrios  
Xistris, the agent of an agent, do not constitute useful papers on this  
motion.

It is admitted by Mr. Dillon that Hideca and Nereus have claims one against the other; that the Hideca arbitration was started first, allegedly by Nereus itself; that only the Hideca arbitration can decide all the issues, including who fundamentally broke the contract and it will also decide Hideca's claims as well as Nereus' claims.

Hideca will not go into the merits of the claims on this motion; it will suffice if deponent advises this Court that Hideca's claim, based upon improper attachment, does not concern the Southern District of New York at all. It concerns Nereus' three abortive orders of attachment, secured on July 8, 1974 and on July 11, 1974. Two of them were served on July 10, 1974 and one was served on July 12, 1974. The M/T Majestic arrived at Mohamadía, Morocco on July 9th and was discharged on July 12, 1974. Nereus, therefore, obtained three Court orders to attach Hideca's property in order to secure a freight payment which was not yet due.

This illegal action was the springboard for most of the present claims and Nereus' guilt is demonstrated by its willingness to accept the freight money in escrow. And just as the money was to be deposited, Nereus withdrew a nominated and accepted ship and refused to supply further vessels and unilaterally ended the charter party, all in completely bad faith.

Hideca needn't prove Nereus' motivation for its unbelievable

conduct. That is as inexplicable as Mr. Dillon's implication that Hideca is insolvent. This incredible and unsupported statement may be libelous and the subject of another claim against Nereus. In the same breath, Mr. Dillon states that Hideca promptly paid freight for all the voyages until the 17th voyage, which payments total many millions of dollars.

As for Nereus' claim that Cepsa is an independent respondent, Cepsa will have no duties whatsoever until Nereus proves Hideca and not Nereus broke the contract. These alleged breaches ought not be arbitrated as Nereus demands, without Hideca being a party to the arbitration.

Mr. Dillon, in his sworn statement, says that Hideca "did not reply to Nereus' demand and nomination of an arbitrator" (Dillon affidavit, page 6) and "disregarded Nereus' demand for arbitration dated August 14, 1974" (Dillon affidavit, page 9), when he full well knows that Hideca appointed Professor Lowenfeld as arbitrator on August 23, 1974 (Dillon affidavit, page 9) well within the twenty days allowed in the charter party.

The relief here sought has not been previously sought by any party. The papers show, and I have been told by Mr. Newman, that he did not appear on Cepsa's prior motion and that he offered an affidavit at the request of the Court. What we seek here is a Court Order simply setting the preferred Order in which the arbitrations should go forward.

The important points on Hideca's request for a stay of the Cepsa arbitration as a proper exercise of this Court's inherent power is based upon:

1. The Hideca arbitration was started first, either on August 14, 1974 by Nereus' demand or on August 23, 1974 by Hideca's demand. The Cepsa arbitration was started on September 3, 1974.
2. The Hideca arbitration will decide all the issues, including
  - a) All defaults by Hideca or Nereus prior to notice given to Cepsa, and
  - b) Hideca's claims against Nereus.
3. The stay of the duplicate Cepsa arbitration will lessen litigation and avoid Nereus' attempt to split its one cause of action since there will be no need for a further arbitration after the Hideca arbitration; there will be only one and not two proceedings.
4. Staying the Cepsa arbitration pending the Hideca conclusion will avoid possible inconsistent awards.
5. Hideca is not a party to the Cepsa arbitration. To determine its alleged default in that arbitration without its presence will constitute a lack of due process.
  - a) Even though an award against Hideca in the Cepsa arbitration will not be res judicata against Hideca, under the informal rules of evidence in arbitration proceedings it can be offered.

6. The stay threatens no prejudice to Nereus since Hideca will be able to proceed faster than Hideca since it knows the facts. Hideca hereby commits itself to a prompt first hearing. It will not cause any untoward delay.

7. The Court is referred to the cases cited in plaintiff's brief, especially the case of Nederlandse Erts-Tanker-Smaatschappij, N.V., v. Isbrandtsen Company, Inc. (1964) 339 F.2d 440, cited on page 11 of the brief and In the Matter of the Arbitration between Stewart Tenants Corp., and Diesel Construction Company, Inc., 16 AD 2d 895, cited on page 14 of the brief.

FOR THE FOREGOING REASONS, plaintiff respectfully requests this Court to exercise its power in keeping its calendar orderly by staying the Cepsa-Nereus arbitration until the Hideca-Nereus arbitration is concluded.

/s/ David L. Maloof

DAVID L. MALOOF

Sworn to before me this  
20th day of February, 1975.

Notary Public

ELLEN F. CARTER  
Notary Public, State of New York  
No. 30-503-000  
Qualified in Nassau County  
Commission Expires March 30, 1976

REPLY AFFIDAVIT OF LAWRENCE W. NEWMAN IN SUPPORT OF MOTION  
FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
	:	
HIDROCARBUROS Y DERIVADOS, C.A.,	:	
Plaintiff,	:	75 Civ. 463 (C.E.S.)
	:	
- against -	:	
	:	
NEREUS SHIPPING, S.A. and	:	
COMPANIA ESPANOLA DE PETROLEOS, S.A.,	:	
Defendants.	:	
-----X	:	

AFFIDAVIT

-----X	:	
	:	
In the Matter of the Arbitration	:	
between HIDROCARBUROS Y DERIVADOS, C.A.,	:	75 Civ. 464 (C.E.S.)
Petitioner,	:	
	:	
and	:	
	:	
NEREUS SHIPPING, S.A.,	:	
Respondent.	:	
-----X	:	

LAWRENCE WALKER NEWMAN, being duly sworn, deposes and  
says:

1. I am a member of the Bar of this Court and of the  
firm of Baker & McKenzie, attorneys, together with Donovan,  
Donovan, Maloof & Walsh, for Hidrocarburos y Derivados, C.A.

("Hideca") in these matters. I make this affidavit to respond to certain statements made by Thomas A. Dillon, Jr., a member of the firm representing the respondent herein, in affidavits which he has submitted with respect to the motion by Hideca for an order staying the arbitration between Compania Espanola de Petroleos, S.A. ("Cepsa") and Nereus Shipping, S.A. ("Nereus") and with respect to Hideca's application for the appointment of third arbitrator.

2. Mr. Dillon purports, in his affidavit regarding the appointment of a third arbitrator (styled "Respondent's Affidavit in Reply to Petitioner's Affidavit" -- hereinafter referred to as "Dillon Arbitrator Affidavit") to set forth the history of the relationship between Hideca and Nereus and attempts to describe the merits of the controversies between them in a way which is both inaccurate and incomplete. Much of what Mr. Dillon says in the Dillon Arbitrator Affidavit is said again in his "Affidavit in Opposition to Plaintiff's Motion for a Preliminary Injunction" (hereinafter referred to as "Dillon Opposition Affidavit"). As Mr. Maloof has stated in his Reply Affidavit in Support of Plaintiff's Motion for a stay dated February 20, 1975, Hideca does not regard it as appropriate to engage, at this time, in a point-by-point rebuttal of all the inaccuracies of the description provided by Mr. Dillon in his two affidavits of the background and merits of the disputes between the parties. Certain comments, however, are necessary.

3. Mr. Dillon, in paragraphs 16 and 17 of the Dillon

Arbitrator Affidavit, has provided an inaccurate description of the process by which the arbitrator appointed by Hideca, Professor Andreas F. Lowenfeld of New York University Law School and Lloyd C. Nelson of Crion and Global Chartering Co., Inc., have considered the appointment of the third arbitrator in the Hideca-Nereus arbitration. I have been informed by Professor Lowenfeld that his first meeting with Mr. Nelson was for lunch on September 30, 1974 and that, at that meeting or shortly thereafter, the names of potential arbitrators were considered by Mr. Nelson and Professor Lowenfeld. Professor Lowenfeld suggested Judge Samuel C. Coleman, a former judge of the Civil Court in the City of New York, and formerly with a maritime law firm (referred to in Professor Lowenfeld's letter which is part of Exhibit 5 to the Dillon Arbitrator Affidavit), and Mr. Nelson suggested as the third arbitrator Professor Joseph C. Sweeney of Fordham Law School and former Judge Lawrence E. Walsh, now a partner of the firm of Davis, Polk and Wardwell. Subsequently, Mr. Nelson and Professor Lowenfeld agreed on Judge Walsh, whom Professor Lowenfeld telephoned in or about late November 1974 to ascertain his willingness to serve as the third arbitrator. Unfortunately, as this Court has been previously informed, Judge Walsh was unable to serve.

4. Regarding the possible appointment of Professor Sweeney, I have been informed today by Professor Lowenfeld that, on February 6, 1975, Mr. Nelson and Professor Lowenfeld, after having considered and discussed other possible third arbitrators, returned to the possibility of Professor Sweeney, and agreed that Professor

Lowenfeld would inquire of Professor Nicholas Healy of the New York University Law School, a former partner of Raymond Burke, Sr. of the firm now representing Nereus, and the lawyer for Mr. Nelson's company, Orion and Global Chattering Co., Inc., as to the service by Professor Sweeney as the third arbitrator. Professor Lowenfeld spoke to Professor Healy on February 6, 1975 and was told by Professor Healy that, although he did not know Sweeney well, he understood that Sweeney had a good reputation. On February 7, 1975, however, Professor Healy telephoned Professor Lowenfeld and said that Raymond Burke, Jr. had studied at Fordham Law School, where he had probably been a student of Professor Sweeney's, and he thought that it was worthwhile pointing out this fact before a decision was made as to the appointment of Professor Sweeney as the third arbitrator.

5. Mr. Dillon, in paragraph 16 of the Dillon Arbitrator Affidavit, endeavors to create the impression that Mr. Burke, Jr. has had little or no contact with this case. I know that, in July of 1974, I spoke on several occasions on the telephone with Mr. Burke, Jr., having done so at the suggestion and request of Mr. Burke, Sr., who referred me to no one in his firm other than Mr. Burke, Jr. Moreover, the court will observe the extent of Mr. Burke's involvement in this matter in the affidavit sworn to on July 26, 1974 by Raymond J. Burke, Jr. in support of plaintiff's application for an order of attachment in the action brought by Nereus against Hideca under docket number 74 Civil 3235 (Mr. Burke

Jr.'s affidavit is included in the papers which make up Exhibit 5 to the Dillon Opposition Affidavit

6. I have been further informed by Professor Lowenfeld that, on February 14, 1975, he reported to Mr. Nelson his conversation with Professor Healy about Professor Sweeney. In that conversation Professor Lowenfeld told Mr. Nelson that, in view of the information received from Professor Healy, it would be better to look elsewhere for a third arbitrator. Mr. Nelson apparently accepted this conclusion. In the same conversation on February 14, 1975, Professor Lowenfeld told Mr. Nelson that a colleague of Professor Lowenfeld's, Professor Howard Kalodner, had suggested that he might ask his father, who was formerly the Chief Judge of the United States Court of Appeals for the Third Circuit, who among the retired judges of that court had familiarity with maritime cases. Professor Lowenfeld further told Mr. Nelson that Professor Kalodner had spoken to his father, who had reported that the maritime expert in the Third Circuit for many years was Judge Albert B. Maris first as a District Judge and then as a Court of Appeals Judge. As Professor Lowenfeld told Mr. Nelson, Professor Kalodner said that he had been informed that Judge Maris had, from time to time, acted as an arbitrator in maritime disputes. Professor Lowenfeld then suggested to Mr. Nelson that Judge Maris be considered as the third arbitrator. Mr. Nelson replied that he did not know Judge Maris and would inquire about him and call back.

7. Professor Lowenfeld has informed me that he called

Mr. Nelson again today and was told by Mr. Nelson that he was heavily involved in a problem for his firm and had not been able to obtain information about Judge Maris. Mr. Nelson said that he would try to call back about Judge Maris, and further stated that he expected to be out of town until March 10, 1975.

8. Although virtually all of the persons suggested by Professor Lowenfeld as the third arbitrator have had, or are likely to have had, experience in maritime matters, Mr. Dillon apparently adopts the statements made by Mr. Nelson in his letter of January 29, 1975 (part of Exhibit 5 to the Dillon Arbitrator Affidavit) that the third arbitrator should be a person from the list submitted by Mr. Nelson of "experienced maritime arbitrators." The disputes between the parties involve not technical maritime questions but almost exclusively questions of contract law, as well as, with respect to one of Hideca's major claims, matters of Moroccan law concerning the illegal attachment action commenced by Nereus in Morocco in July of 1974. The references in Paragraph 18 of Mr. Dillon's Arbitrator Affidavit to such matters as war risk premiums and demurrage are obviously made with the emphasis given them to create the impression that the questions to be decided by the arbitrators are of a technical nature. In reality, the war risk premiums and demurrage aspects of this case constitute considerably less than ten percent of the amount of money in issue, since each side is claiming against the other some three to four million dollars in damages and the items referred to by Mr. Dillon probably amount to around \$400,000.

9. Perhaps the most significant omission from the Dillon Arbitrator Affidavit is the failure of Mr. Dillon to mention the fact that Professor Lowenfeld and Mr. Nelson reached agreement on a third arbitrator, Judge Lawrence E. Walsh, who is, indeed, a distinguished attorney, and who has a background similar to those of the persons characterized by Mr. Dillon (in paragraph 19 of his Arbitrator Affidavit) as "...outside the field of shipping, commercial charter disputes, and maritime practice." If Nereus accepted former Judge Walsh as a third arbitrator, it seems curious indeed that the other illustrious jurists and members of the Bar suggested by Hideca are not acceptable to it. Hideca's position is that maritime and admiralty experience is a desirable quality for the third arbitrator to have, but that knowledge of maritime questions alone seems inappropriate for a case of the complexity and significance of the present one.

10. Among the erroneous factual assertions contained in the Dillon Opposition Affidavit are certain of those set forth in paragraphs 10 through 12 of that affidavit. According to paragraph 10, Hideca defaulted in the payment of freight and demurrage for the 17th voyage, that of the *Majestic*; which was completed on July 12, 1974. Payment of these amounts was, according to the charter party, to be paid "upon delivery of cargo at destination." From investigations made by this firm in Morocco, we have learned that, Monday, July 2, 1974, Nereus obtained orders from a court in Casablanca for the attachment of the proceeds to be received by Hideca from a delivery of the *Majestic's* cargo of crude oil.

We have further learned that on Wednesday, July 10, 1974, this order was served on the would-be garnishees: in Morocco. As Mr. Dillon admits (paragraph 9 of Dillon Opposition Affidavit), discharge of the cargo of the Majestic was not completed until Friday, July 12, 1974 -- a full working week after the obtaining by Nereus of the orders for the attachment, which orders were obtained on the basis of an alleged default by Hideca in payment of freight which was not yet due.

11. The bad faith shown by Nereus in acting in the fashion described above is made even more manifest when one realizes, as was admitted to me by representatives of Nereus in London during the week of July 15, 1974, that in order to obtain the orders of attachment, it was necessary for invoices reflecting the amounts allegedly owed by Hideca to be shipped by air freight from London to Morocco. Thus, the preparation for the obtaining of the Moroccan orders of attachment clearly must have begun on or about Wednesday, July 3, 1974, when Nereus agreed to permit a waiver of the trading limits under the charter party so as to permit the Majestic to deliver its cargo in Morocco in return for payment of a higher world scale rate. Previously, Hideca had been planning to deliver the cargo at Tenerife within the trading limits. Apparently Nereus made this agreement permitting discharge in Morocco virtually at the same time as it was obtaining the services of a lawyer in Casablanca and beginning its preparations for the attachment, which was based on monies to be owed about ten days thereafter.

12. On Saturday, July 13, 1974, while in Cairo, Egypt, I learned that Nereus had obtained an order of attachment with respect to the monies owed for the cargo of the Majestic. I immediately went to London, arriving on the morning of Monday, July 15, 1974. Thereafter, through the rest of the week, I had discussions with representatives of Nereus at the office of C. M. Lemos & Co. on Fenchurch Street in London. Pursuant to those discussions, and to discussions which I had over the telephone with Raymond Burke, Sr., the lawyer then and now for Nereus, it was agreed that an escrow account would be established by Hideca covering the amount of the freight due for the 17th voyage under the contract of affreightment and the sums allegedly due for demurrage and related matters with respect to other voyages. In return for the establishment of the escrow account by Hideca, Nereus was to agree to release the \$1,500,000.00 then thought to be attached in Casablanca -- such amount being considerably in excess of the amounts claimed to be owed by Nereus.

13. On July 16, 1974, I was provided with a set of documents relating to the demurrage and other claims after I explained to the Lemos people that Hideca had never received this documentation at its offices in Caracas and that thus had no basis for paying the claims.

14. On Friday, July 19, 1974, Hideca made arrangements with its bank for the transfer of a total of \$1,236,846.23, which sum was to be placed in the escrow account.

15. I returned to New York thereafter, and during the week of July 22, 1974 continued making the arrangements for the establishment of the escrow account and the drafting of the escrow documents. Before the agreement could be signed and the money transfer could be effected, Nereus, on Wednesday, July 24, 1974 notified Cepsa that it was invoking its alleged rights under the Cepsa guarantee and that it was no longer regarding Hideca as responsible under the contract of affreightment. See exhibit 4 to Dillon Opposition Affidavit, the telex of July 24, 1974 from Nereus's agents in which it was stated, "owner hereby gives Cepsa notice under said letter of guarantee that Hideca is in default under the charter party and calls upon Cepsa to perform the balance of the charter party..."

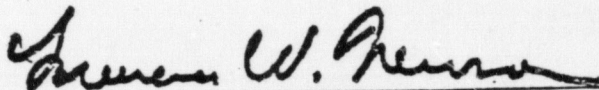
16. On the following day, July 25, 1974, I had a telephone conversation with Raymond Burke, Jr. in which he confirmed what I had heard that Nereus had in fact invoked the Cepsa guarantee and was, therefore, no longer looking to Hideca for performance of its obligations under the contract of affreightment. Thus, before the escrow agreement -- which had been discussed and arrangements for which had been virtually completed -- could be put into effect Nereus again precipitously acted, again in bad faith. It seems clear that Nereus, even while discussing the establishment of the escrow arrangement at the same time was planning to invoke the Cepsa guarantee. In addition, Nereus was apparently planning to bring an action against Hideca

A 165

*Reply Affidavit of Lawrence W. Newman*

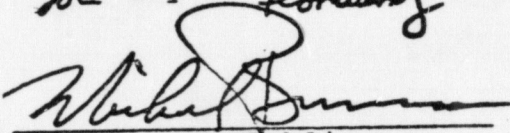
in this Court, for a complaint was filed and the order of attachment obtained by Nereus in the Court on Friday, July 26, 1974. It is apparent that a decision had to be made and preparations undertaken several days in advance of that date for such actions to have been taken by Nereus.

Dated: New York, New York  
February 20, 1975



LAWRENCE WALKER NEWMAN

Sworn to before me this  
20<sup>th</sup> day of February, 1975



Notary Public

MICHAEL BURROWS  
Notary Public, State of New York  
No. 31-4601202  
Qualified in New York County  
Commission Expires March 30, 1978

REPLY AFFIDAVIT OF THOMAS A. DILLON, JR. IN  
OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION  
AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

HIDROCARBUROS Y DERIVADOS, C.A.,

Plaintiff,

75 Civ. 463 (CES)

-against-

NEREUS SHIPPING, S.A. and  
COMPANIA ESPANOLA DE PETROLEOS, S.A.,

REPLY AFFIDAVIT IN  
OPPOSITION TO PLAIN-  
TIF'S MOTION FOR A  
PRELIMINARY IN-  
JUNCTION

Defendants.

-----x

THOMAS A. DILLON, JR., being duly sworn, deposes and  
says:

1. I am an attorney duly admitted to practice before  
this Honorable Court and a member of the firm of Burke & Parsons,  
attorneys for the Defendant NEREUS SHIPPING, S.A. ("Nereus")  
and am familiar with all proceedings heretofore had herein.

2. This affidavit is submitted in reply to the  
affidavits submitted by Petitioner to the Court at the hearing  
on February 21, 1975 and served on Nereus at said hearing.

3. Annexed hereto and made a part hereof as Exhibit  
A is a copy of Invoice No. 254 together with the laytime state-  
ment for demurrage on Voyage No. 14 in the amount of \$68,529.18.  
Invoice No. 254 was dated February 12, 1974 and was forwarded  
to Hideca c/o Messrs. Long Quinn & McAleer, the chartering  
brokers, who have advised that they promptly forwarded it to  
Hideca.

A 167

Reply Affidavit of Thomas A. Dillon, Jr.

4. On March 8, 1974, Triton Shipping, Inc., Nereus' New York agent sent the following telex to Hideca:

"ATTN: SENORS R. TUDELA/L. WOLFF

OWNERS ANXIOUSLY AWAITING YOUR CABLE REMITTANCE OF PREVIOUSLY MENTIONED OUTSTANDINGS OF DLRS 74,999.55 X FURTHERMORE THE FOLLOWING INVOICES WHICH WERE AIRMAILED TO YOUR OFFICE ON 13 FEB. ARE LIKEWISE DUE FOR SETTLEMENT:

INV 254/74 S.T. MAJESTIC DEMURRAGE DLRS	68,529.17
INV 265/74 S.T. MAJESTIC WAR RISK DLRS	<u>15,000.00</u>
LTOTAL DLRS	<u>83,529.18</u>

TRITON SHIPPING INC  
AS AGENTS ONLY

The telex further asked Hideca "HOW RECVD PLS" and Hideca answered back on the telex "WELL TKS". A copy of the telex dated March 8, 1974 is annexed hereto and made a part hereof as Exhibit B.

5. On March 22, 1974, the chartering brokers, whose telex identification is "LONGTANKER" sent a telex to Hideca, a copy of which is annexed hereto and made a part hereof as Exhibit C, stating as follows:

"23281 HIDECA

LONGTANKER NYK MARCH 22/74

NEREUS IS LOOKING FORWARD TO YOUR PROMPT REMITTANCE OF THE

MAJOR PART AS PER OUR TELECON OF	
158,528.73	MADE UP OF
68,529.18	MAJESTIC DEMURRAGE
15,000.00	WAR RISK INSURANCE
74,999.55	DEMURRAGES"

6. On April 8, 1974, Hideca replied to the chartering brokers as follows:

"PROCEEDING REMITTANCE VARIOUS NEREUS/CHARGES FOR DEMURRAGE, ETC. GOING BACK ON FEW PENDING ITEMS SOONEST OUR MARINE DEPT COMPILES INF. AND REPORTS"

Hideca's reply was forwarded by telex by the chartering brokers to Nereus' New York agent and a copy of said telex is annexed hereto and made a part hereof as Exhibit D.

7. Despite the foregoing, Nereus' claims for additional War Risk Insurance premiums of \$15000.00 and demurrage of \$68,529.18 for the S.T. MAJESTIC for Voyage No. 14, which was completed on February 7, 1974 have never been paid. The Reply Affidavits of Hideca's attorneys stated as follows:

1) The Reply Affidavit of Mr. Maloof in 75 Civ. 464 on page 2:

"The reason that the demurrage claims were not paid are because Hideca never received the underlying papers, and therefore had no basis upon which to make the payments. These papers were finally hand delivered on July 16, 1974. These claims will probably not be the subject of arbitration if the papers support them."

2) The Affidavit of Mr. Newman dated February 20, 1975:

"13. On July 16, 1974, I was provided with a set of documents relating to the demurrage and other claims after I explained to the Lemos people that Hideca had never received this documentation at its offices in Caracas and that thus had no basis for paying the claims."

8. Invoice No. 641 dated April 30, 1974 covering demurrage of \$143,797.20 with supports was sent to Hideca on

Reply Affidavit of Thomas A. Dillon, Jr.

or about that date, and Invoice No. 683 dated May 16, 1974 covering demurrage of \$143,355.47 with supports was sent to Hideca on or about that date. Copies of the aforesaid invoices and supports are annexed hereto and made a part hereof as Exhibits E and F respectively.

9. On May 20, 1974, Nereus' New York agent sent a telex to Hideca (receipt of which was acknowledged therein), a copy of which is annexed hereto and made a part hereof as Exhibit G, stating as follows:

"GA  
HIDECA  
CARACAS  
OWNERS URGENTLY REQUEST IMMEDIATE PAYMENT OF THE BELOW LISTED  
OUTSTANDINGS:

VESSEL	LIFT NBR	INV	DESCRIPTION	AMOUNT
POETIC	13	416/11-3-74	PORT CHGS DLRS	344.74
MAJESTIC	14	254/12-2-74	DEMURRAGE "	68,529.18
MAJESTIC	14	263/13-2-74	WAR RISK "	15,000.00
TROPIC	15	683/6-5-74	DEMURRAGE "	143,355.47
MAJESTIC	16	641/30-4-74	DEMURRAGE "	143,797.20
MAJESTIC	16	728/16-5-74	INTEREST "	3,930.92
			TOTAL DLRS	374,957.51

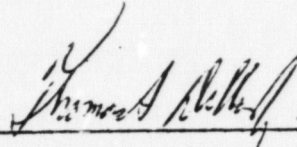
IF IMMEDIATE SETTLEMENT IS NOT PRACTICAL, OWNERS WOULD  
APPRECIATE A FURTHER ADVANCE OF DLRS 275,000.00 PENDING YOUR  
FINALIZATION OF THESE ACCOUNTS  
TRISHORE

#  
23280 HIDECA  
232349 TRI UR. . . . ."  
D002.4"

10. In view of the fact that Hideca was in default in the payment of the demurrage, port charges and additional War Risk Insurance premiums, Nereus was justifiably concerned about the payment of freight and demurrage for the seventeenth

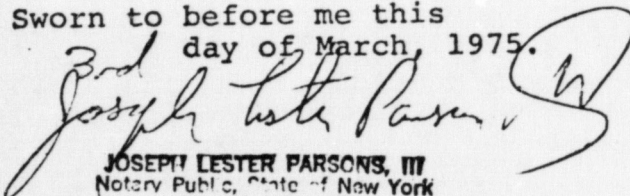
## Reply Affidavit of Thomas A. Dillon, Jr.

voyage. Since the Charter contained an express clause granting Nereus a lien on cargo for "freight, deadfreight, demurrage and costs" (Clause 21 of Part II of the Charter and under American law a lien on freight is a possessory lien, it was proper and prudent for Nereus to make arrangements at the discharging port to assert the lien, if necessary. In fact, Hideca did not pay the freight and demurrage for the last or seventeenth voyage but Nereus did not succeed in liening the cargo or in obtaining security at the discharge port or by escrow in New York.



Thomas A. Dillon, Jr.

Sworn to before me this  
3rd day of March, 1975.



JOSEPH LESTER PARSONS, III  
Notary Public, State of New York  
No. 31-2025075  
Qualified in New York County  
Commission Expires March 30, 1975

A 171

EXHIBIT A--INVOICE NO. 254 ANNEXED TO REPLY  
AFFIDAVIT OF THOMAS A. DILLON, JR.

DEBIT

92 FENCHURCH STREET

LONDON EC3M 4EB

Telegraphic Address  
Inland "TRISTAR, TELEX, LONDON."  
Foreign "TRISTAR, LONDON. EC3M 4EB"  
Telephone: 01-480 7971 (10 Lines)

12th February, 1974. ~~ppx~~

INVOICE NO. 254/74

*M*ESSRS. HIDROCARBUROS Y. DERIVADOS C.A.  
C/O: MESSRS. LONG QUIN & MCALLER.

Dr. to

C. M. LEMOS & CO., LIMITED.

As agents only for owners

VAT. Reg. No. 243 1211 17

s.t. "MAJESTIC" C/P 27.1.71 No.14

Demurrage earned by subject  
vessel at Loading & Discharging  
Ports, as per attached Laytime  
Statement.

6 Days 6 Hours 10 Minutes or  
(6.256944 days) at w.s.130 =  
= \$10,952.50

= \$ 68,529.13

PLEASE REMIT TO:

FIRST NATIONAL CITY BANK,  
336 Strand, London, W.C.2.

FOR ACCOUNT OF:

NEREUS SHIPPING S.A.  
Account No. 902-40-3.

AE/gnk

REGISTERED IN ENGLAND: No. 410059. REGISTERED OFFICE: 92, FENCHURCH STREET, LONDON EC3M 4EB

A 172

Exhibit A Annexed to Affidavit of Thomas A. Dillon, Jr.

MAJESTIC C/P 27.1.1971.

LAYTIME ALLOWED TO LOAD/DISCHARGE 72 HRS.

RAS TANURA (LOADING PORT)

VESSEL ARRIVED	0430	29.12.73.
N/R TENDERED	0430	29.12.73.
VESSEL BERTHED	2150	1.1.74.
COMMENCED LOADING	0315	2.1.74.
COMPLETED LOADING	1540	2.1.74.
HOSES DISCONNECTED	1605	2.1.74.
LAYTIME COMMENCED	1030	29.12.73.

		H.	M.	
29.12.73.	1030-2400	13	30	
30.12.73.	0000-2400	24	00	
31.12.73.	0000-2400	24	00	
1.1.74.	0000-1925	19	25	
1.1.74.	1925-2150	-	-	BERTHING
1.1.74.	2150-2400	±	-	DEBALLASTING
2.1.74.	0000-0210	±	-	DEBALLASTING
2.1.74.	0210-1605	13	55	
		94	50	VESSEL ON
		=====		DEMURRAGE

LAYTIME USED AT RAS TANURA

CABO SAN ANTONIO/RECALDA/LA PIATA (DISCHARGING PORTS)

VESSEL ARRIVED	2320	1.2.74.
COMMENCED LIGHTERING	0400	2.2.74.
COMPLETED DISCHARGING	0545	7.2.74.
HOSES DISCONNECTED	0640	7.2.74.
LAYTIME COMMENCED	2320	1.2.74.

		H.	M.
1.2.74.	2320-2400	00	40
2.2.74.	0000-2400	24	00
3.2.74.	0000-2400	24	00
4.2.74.	0000-2400	24	00
5.2.74.	0000-2400	24	00
6.2.74.	0000-2400	24	00
7.2.74.	0000-0640	06	40
LAYTIME USED TO DISCHARGE		127	20
LAYTIME USED TO LOAD		94	50
TOTAL TIME USED		222	10
TOTAL TIME ALLOWED		72	00
TIME LOST		150	10

DEMURRAGE: 6D, 6H, 10M. or (6.256944 DAYS)  
 at W.S. 130 \$ 10.952.50 = \$ 68.529.18  
 AE/Md.  
 12.2.74.

A 173

EXHIBIT B--TELEX DATED MARCH 8, 1974 ANNEXED TO REPLY  
AFFIDAVIT OF THOMAS A. DILLON, JR.

23280 HIDECA  
RCA 03004 1455  
GA

ATTN: SENORS R. TUDELA/L. WOLFF

OWNERS ANXIOUSLY AWAITING YOUR CABLE REMITTANCE OF PREVIOUSLY  
MENTIONED OUTSTANDINGS OF DLRS 74,999.55 X FURTHERMORE THE FOLLOWING  
INVOICES WHICH WERE AIRMAILED TO YOUR OFFICE ON 13 FEB. ARE  
LIKEWISE DUE FOR SETTLEMENT:

INV 254/74 S.T. MAJESTIC	DEMURRAGE DLRS 68,529.17
INV 265/74 S.T. MAJESTIC	WAR RISK DLRS 15,000.00
LTOTAL	DLRS 83,529.18
	*****

TRITON SHIPPING INC  
AS AGENTS ONLY

HOW RECVD PLS

WELL TKS  
23280 HIDECA  
232349 TRI UR.....  
0002.4

7

CA

RECEIVED  
FEB 13 1974

A 174

EXHIBIT C--TELEX DATED MARCH 22, 1974 ANNEXED TO REPLY  
AFFIDAVIT OF THOMAS A. DILLON, JR.

FILE	
MAR 27 1974	
WCV	<input checked="" type="checkbox"/>
CHE	<input checked="" type="checkbox"/>
CHS	<input type="checkbox"/>
UPP	<input type="checkbox"/>
LPR	<input type="checkbox"/>
CRW	<input type="checkbox"/>

INT 03 22 1355

420397 LOS HIS 523261+

EC072

1355 INT

1355 1355

LAUNCHER BY MARCH 22/74

WE ARE LOOKING FORWARD TO YOUR PROMPT REPITANCE OF THE SAID FORT

6,000.14  
1,000.00  
1,000.00

UP OF  
SCIENTIFIC DEMONSTRATION  
AND RISK INSURANCE  
REBURGES

1974 TRANSFER  
SHIP

66

A 175

EXHIBIT D--TELEX DATED APRIL 8, 1974 ANNEXED TO REPLY  
AFFIDAVIT OF THOMAS A. DILLON, JR.

TRITON SHIPPING INC GABLS

LONG TANKR NYK

LONG TANKR NYK  
08 APRIL 1974

ATT FRANK BRADLEY

QUOTE

PROCEEDING REMITTANCE VARIOUS NERENUS CHARGES FOR DEMURRAGE,  
ETC. GOING BACK ON FEW PENDING ITMES SOONEST OUR MARINE DEPT  
COMPILES INF. AND REPORTS

UNQUOTE

\\\\\\\\

CUT

127-572-8 11 01 54

7

A 176

EXHIBIT E--INVOICE NO. 641 ANNEXED TO REPLY  
AFFIDAVIT OF THOMAS A. DILLON, JR.

DEBIT

92 FENCHURCH STREET

LONDON EC3M 4EB

Telegraphic Address  
Inland "TRISTAR, TELEX, LONDON."  
Foreign "TRISTAR, LONDON. EC3M 4EB"  
Telephone: 01-480 7971 (10 Lines)

30TH APRIL 1974

INVOICE NO. 641/74  
VOY.61

MESSRS. HIDROCARBUROS Y DERIVADOS C.A. (HIDEACA)  
C/O MESSRS. LONG, QUINN & MACALEER. INC.

**C. M. LEMOS & CO., LIMITED.**

As agents only for owners

VAT. Reg. No. 243 1211 17

s.t. "MAJESTIC" CP 27.1.71  
Lifting No. 16.

Demurrage earned by subject  
vessel at Loading & Discharging  
ports, as per attached Laytime  
statement.

13Days 03Hrs 06Mins or (13.129167  
days) @ WS 130 \$10,952.50 =

\$ 143,797.20.

PLEASE REMIT TO:

FIRST NATIONAL CITY BANK  
336, Strand, London, W.C.2.

FOR ACCOUNT OF:

NEREUS SHIPPING S.A.  
Account No. 902-40-3.

AE/lak

A 177

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

s.t. "MAJESTIC" - C/P 27.1.71, No.16.

LAYTIME STATEMENT

LAYTIME ALLOWED TO LOAD/DISCHARGE 72 HOURS.

RAS TANURA (LOADING PORT)

VESSEL ARRIVED	14.30	8.3.74
N/R TENDERED	14.30	"
VESSEL BERTHED	12.15	9.3.74
COMMENCED LOADING	19.05	"
COMPLETED LOADING	11.05	10.3.74
HOSES DISCONNECTED	12.15	"
LAYTIME COMMENCED	20.30	8.3.74

CABO SAN ANTONIO/LA PLATA (DISCHARGING PORTS)

VESSEL ARRIVED	17.00	10.4.74
LIGHTERSHIP ALONGSIDE	18.30	"
COMPLETED DISCHARGING	08.00	25.4.74
LAYTIME COMMENCED	18.30	10.4.74

		H.	M.	
8.3.74	20.30-24.00	03	30	
9.3.74	00.00-10.06	10	06	
	10.06-12.15	-	-	BERTHING
	12.15-24.00	11	45	
10.3.74	.00-12.15	12	15	
10.4.74	18.30-24.00	05	30	
11th-24th.4.74	00.00-24.00	336	00	
25.4.74	00.00-08.00	08	00	
TOTAL TIME USED	:-	387	06	
TOTAL TIME ALLOWED	:-	72	00	
TOTAL TIME LOST	:-	315	06	

Demurrage 13 Days 03 Hours 06 Minutes or (13.129167 days)  
 at WS130 \$10,952.50 = \$143,797.20

edl.  
 30.4.74

A 178

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

MAJESTIC LIT. 16

REQ TAVUKA 8-10 MARCH 1974

INV 641/74

A 179

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

FORM 821-1

E. W. SAYBOLT &amp; CO., S. A.

RAS TANURA, SAUDI ARABIA

MARCH 10, 1974

JOE. H. MCCABE, JR., PRESIDENT

APPROVED AND LICENSED BY THE NEW YORK PRODUCE EXCHANGE

INSPECTORS OF PETROLEUM

M/T "MAJESTIC"

ORDER NO: 15867 -21/60

TANK HISTORY: Last Cargo CRUDE, Second Last Cargo CRUDE, Third Last Cargo CRUDEVESSEL'S TANKS: THIS IS TO ADVISE THAT WE HAVE ON THE ABOVE DATE COMPIED WITH YOUR ORDER AND VISUALLY INSPECTED THE TANKS OF THE ABOVE VESSEL AND AT THAT TIME FOUND SAID TANKS TO BE EMPTY IN OUR OPINION. FROM SUCH VISUAL INSPECTION AND FROM INFORMATION AS STATED ABOVE SUBSTANTIALLY CLEAN FOR RECEIPT OF DESIGNATED CARGO. VALVES FOR LOADING OR UNLOADING VESSELS REMAIN THE RESPONSIBILITY OF AND ARE SET BY THE VESSELS PERSONNEL AND SAYBOLT CAN ASSUME NO RESPONSIBILITY FOR SAME.Shore Lines Before Loading FULL ARRIVAL-Draft-Fwd. 16' 00" Aft 26' 00"Shore Lines After Loading FULL SAILING-Draft-Fwd. 43' 03" Aft 43' 03"Shore Line Valves Set by Representative of Supplier PIPELINE FULL BEFORE AND AFTER LOADING

ARRIVED	1430	8	MARCH	SEA VALVES CLOSED AND SEALED PRIOR TO LOADING
BERTHED	1215	9	MARCH	
START BALLAST	1215	9	MARCH	
FINISH BALLAST	1845	9	MARCH	
INSPECTED	1855	9	MARCH	
START CARGO	1905	9	MARCH	
FINISH CARGO	1105	10	MARCH	

TANKS	ULLAGES TAKEN @ HATCHES						TEMPERATURES °F			COMMODITY	WATER GAUGES	
	PORT		CENTER		STARBOARD		P	C	S		P	C
	FT	IN	FT	IN	FT	IN						
1	5	0 1/2	5	1	5	1	AVG. TEMP. 107° F			"ARABIAN LIGHT"	NONE	FOUND
2	FLUME		4	1	FLUME							
3	EMPTY		5	2 1/2	EMPTY							
4	FLUME		4	1	FLUME							
5	3	8	4	7	3	6 1/2						
DUCT	FULL				FULL							
VESSEL ARRIVED WITH 839 BARRELS SLOPS IN NO. 5 CENTER TANK. THIS AMOUNT DEDUCTED FROM SHIP'S FIGURE												
QUANTITY ONBOARD USING VESSEL'S ULLAGES AND CALIBRATION CHARTS: 471,158 NET BARRELS												

MEMBERS  
A S T M

A 180

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

## INRER TIME REPORT

AMCO 477 (8/69)

SHEL

ARABIAN AMERICAN OIL COMPANY  
DHAKRAH, SAUDI ARABIA

PORT

RAS TANURA, SAUDI ARABIA

S. S. MATTHEW

DWT 66,410

ONSLER NO.

5557-21/60

CAL TIME

DATE

MARCH 10 1974

GMT plus

hours

## TIME STATEMENT

DATE

TIME

ETA NOTICE  
NOTICE OF READINESS TENDERED  
ALL FAST IN BERTH

08

0946

08

1430

09

1215

DOCTOR ON BOARD  
QUARANTINE FLAG DOWN  
BALLAST STARTED  
BALLAST FINISHED

09

1215

09

1215

09

1215

09

1550

CARGO STARTED  
CARGO HOSE OFF  
VESSEL

09

1905

10

1215

10

1245

## 1. REASONS FOR DELAY - CHECK

☐ Awaiting Berth/Blender/Cargo  
(Circle proper cause)☐ Port Closure☐ Equipment or Mechanical Failure of  
Arqmo Facilities (Explain below)☐ Bunkering not concurrent with cargo  
loading due vessel fault.

## 2. OTHER

☒ Master given written notice of failure  
to load at rates prescribed in loading  
notice to Master (Attach copy)☐ Master given protest for deficiency in  
vessel equipment including cargo hand-  
ling and safety equipment (Attach copy  
of protest)☐ Master given protest for unsafe practices  
(if loading halted, indicate item of  
Declaration by Master)☐ Vessel arrived with part cargo aboard

## REMARKS

Proceeding from anchorage to port at 1006-9 to 1215-9

Finished cargo loading at 1105-10

1) Suitable berth unavailable from 1430-8 to 1006-9

2) Lining up from 1850-9 to 1905-9

3) Discrepancy in cargo from 1105-10 to 1215-10

ARABIAN AMERICAN OIL COMPANY

BY

J. J. J. J.

A 181

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

S.T. MAJESTIC  
Monrovia

DATE			
TIME			
PLACE			
1 APR 1974			
REMARKS			
Port of CAPESANTO 10-4-1974			
NAME			

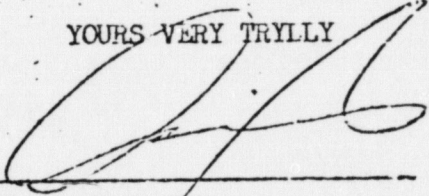
DEAR SIRs,

NOTICE OF READINESS

I HEREBY TENDER YOU THE S.T. "MAJESTIC", AT 1700 HOURS LOCAL TIME APRIL 10 1974 AS BEING READY IN ALL RESPECTS TO COMMENCE DISCHARGING OF HER CARGO.

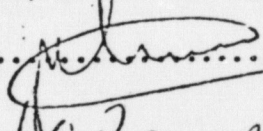
LAY HOURS SHALL COMMENCE UPON EXPIRATION OF SIX (6) HOURS AFTER RECEIPT OF THIS NOTICE OR UPON COMMENCEMENT OF DISCHARGING WHATEVER OCCUR FIRST.

YOURS VERY TRULY

  
K. A. SARDINIS - Master

RECEIVED IN ACCORDENCE WITH THE TERMS OF THE CHARTER PARTY.

DATE... APRIL 10... LOCAL TIME... 1700... HOURS.

BY MR.  .....

McREAL MASTER

A 182

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

S/T "MAJESTIC"

MONROVIA  
-----

PORT OF *430 SLD Arto*

DATE.....*12 APR - 1971*

DRY CERTIFICATE  
-----

This is to certify that i have inspected all cargo tanks and ducts  
of the above Vessel and found them to be empty nad dry.- *1-3 CENTER*  
*1-5 PORT AND STARBOARD. - DUCTS PORT AND*  
*STARBOARD*

*[Signature]*  
.....  
The Inspector *Sgt. Bolt.*

# A 183

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

## PORT DISPATCH REPORT

FD FORM 30 -

S.S. MAJESTIC VOY. NO. 108 H PORT Cabo San Antonio (Anchorage) DATE 10-11-74 16/11/74  
 ARRIVING INWARD FROM MASTANURA DATE LEFT 10-3-1974 DAYS ENROUTE 35-07-30  
 TERMINAL Cabo San Antonio-Anchorage-Argentina (X) LOADING (X) DISCHARGING

	DATE	TIME	
END OF SEA PASSAGE	10-4-74	14 30	ARRIVING DRAFT <u>F1306 A 1306 MIL (A) 1306 SAL</u>
PILOT ON BOARD	-	-	TUGS USED NAME: FROM TO:
ANCHORED	10-4-74	17 00	1. _____
PRATIQUE GRANTED	10-4-74	19 40	2. _____
ANCHOR UP	17-4-74	08 15	3. _____
ANCHORED	-	-	4. _____
ANCHOR UP	-	-	BUNKERS FUEL <u>3007 L/</u> TONS WATER <u>300 L/</u> TONS
ALL FAST	-	-	ON ARRIVAL DIESEL <u>62 L/</u> TONS
NOTICE OF READINESS, TENDERED	10-4-74	17 00	CARGO GRADE 1 GRADE 2 GRADE 3
BALLAST HOSE CONNECTED	-	-	SHORE/SHIP G. BELS <u>293.050</u> / / /
CARGO HOSE CONNECTED	10-4-74	19 40	SHORE/SHIP L/TONS <u>38.973</u> / / /
BALLAST STARTED ( ) IN OUT	-	-	RATE PER HR _____
BALLAST FINISHED	-	-	*NUMBER OF GRADES WORKED SIMULTANEOUSLY _____
CARGO STARTED	10-4-74	19 45	BUNKERS FUEL <u>-</u> TONS WATER <u>-</u> TONS
CARGO FINISHED	11-4-74	02 35	RECEIVED DIESEL <u>-</u> TONS
CARGO STARTED	11-4-74	11 05	LEAVING DRAFT <u>F2300 A 2406 MIL (A) 2308 SAL</u>
CARGO FINISHED	12-4-74	01 40	TUGS USED NAME: FROM TO:
CARGO STARTED	12-4-74	07 10	1. _____
CARGO FINISHED	12-4-74	07 45	2. _____
CARGO STARTED	12-4-74	08 40	3. _____
CARGO FINISHED	12-4-74	10 25	4. _____
BUNKERS STARTED	-	-	BUNKERS FUEL <u>2829 L/</u> TONS WATER <u>200 L/</u> TONS
BUNKERS FINISHED	-	-	ON SAILING DIESEL <u>62 L/</u> TONS
WATER STARTED	-	-	ACTUAL BALLAST TIME
WATER FINISHED	-	-	ACTUAL CARGO TIME
BALLAST HOSE DISCONN.	-	-	CARGO DELAYS SHIPS A/C
CARGO HOSE DISCONN.	12-4-74	11 00	CARGO DELAYS SHORE A/C
LEFT <u>///</u> Anchorage	17-4-74	08 20	TOTAL CARGO TIME
ANCHORED	-	-	TOTAL TIME UNDER REPAIRS
ANCHOR UP	-	-	TOTAL TIME *ALLFAST* TO *LEFT DOCK*
PILOT OFF	-	-	Sailed OUTWARD FOR: <u>La Plata Roads</u> DATE DUE <u>17-1-74</u>
SEA PASSAGE STARTED	-	-	CARGO AVG TEMP. HOSES NO. SIZES SHORELINE NO. SIZE LENGTH ACTUAL SHORE PRESS SHORE PRESS LIMIT SHIP DECK DELIVERY PRESSURE
REMARKS * BLANK SPACES TO BE USED FOR INTERRUPTIONS IN LOADING OR DISCHARGING			1. 2 x 8"
			2. 2 x 8"
			3. 2 x 8"

V 87 50 100-1/72

A 184

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

## VESSEL REPORT

Port Cabo San Antonio—Anchorage  
ArgentineDate 10-11-12-13-14-15-16/4/1974S: T. MAJESTICVoyage No. 108 B

Name of Agents

Last Port RASTANNURADate of Arrival April 10th 19 74 14 30 P. M. Docked - 19 - MLoading - 19 - M Loading - 19 - M

Commenced—

Finished—

Discharging April 10th 19 74 19 45 P. M. Discharging April 12th 19 74 10 25 A. M.Total No. of Hours Loading Cargo - Total No. of Hours Disch'g Cargo 0-23-45Draft Arrival - Fore 43 06 All 43 06 Mean 43 06Density of Water oz. per cu. ft. - Equivalent Salt Water Draft Mean -No. of Crew on Arrival 36 No. of Crew on Departure -Cargo Loaded - Cargo Discharged 38.973 L/TBunkers on Arrival Dock 3007 L/T bbls. at 60o Bunkers consumed at dock 178 L/T bbls. at 60oBunkers Loaded - bbls. at 60o Bunkers departing dock 2829 L/T bbls. at 60oFresh Water on arrival dock 300 L/ Tons Fresh Water on departing dock 300 L/T TonsDate Sailing April 17th 19 74 08 20 A. M. Destination Recalada L/V  
La Plata Roads—ArgentineDraft on Departure - Fore 23 00 All 24 04 Mean 23 08Density of Water - oz. per cu. ft. Equivalent Salt Water Draft Mean -Delays—Causes if any exact time lost in each case -From 1700 April 10th 1974 till 1815 April 10th 1974 awaiting tanker "KALINGA"Remark From 0320 April 11th 1974 till 0930 April 11th 1974 awaiting tanker "PETROMAR CAMPANA"From 0300 April 12th 1974 till 0525 April 12th 1974 awaiting tanker "HARVELLA"From 0745 April 12th 1974 till 0840 April 12th 1974 discharging interrupted due  
tanker "HARVELLA'S ordersFrom 1150 April 12th 1974 till 0800 April 17th 1974 awaiting orders for the rest cargo.

Port activities to be recorded on reverse side under heading "Port Log."

V 64-51000 5/72

A 185

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

CARGO OIL TANKS

Tank No.	Loading or Discharging Fuel Oil						
	Port Tanks Ullage	Temp	Barrels	Starboard Tanks Ullage	Temp	Barrels	Center Ullage
1	5-10	70°	26.581	5-10	70°	26.581	6-02
2							5-II
3							6-02
4							6-03
5	5-2½	70°	35.920	5-2½	70°	35.920	5-II
DUGTS	FULL		2.235	FULL		995	
7							
8							
9							
10							
11							

Cargo Data			Loading or Disch	
Ship Figure	476.980	Bbls. Gross	Size of Hose	2 x 8"
Temperature Correction	F= 0.9956	Bbls. Gross	Size of Dock Line	
Total	474.881,28	Bbls. Net		
Cargo	63.427,44 L/T			
Shore Figures		Bbls. Net		
Kind of Cargo	Arabian Light crude oil			
Gravity	0.8555			
A.P.I.=33.9	7,487 Bbls per L/T			

Ullages Taken By M. Kapellakis, Ch. Officer

Witnessed By

Captain's Signature

DRY CERTII

S. T. \_\_\_\_\_ P.

This is to certify that all cargo is before loading

dry after discharging

Signed By \_\_\_\_\_

For \_\_\_\_\_

Witnessed By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

A 186

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

## PORT DISPATCH REPORT

PD FORM 20

SS PA. VOY. NO. 106 H Peculada / Anchorage 17-1-74 20-21-74  
 PORT La Plata Pardo-Argentin DATE 17-1-74 DAYS ENROUTE 22-24-25/1/1974  
 ARRIVING INWARD FROM Cape San Antonio-Anchorage DATE LEFT 17-1-74 DAYS ENROUTE 22-24-25/1/1974  
 TERMINAL La Plata Pardo ( ☒ ) LOADING ( ☒ ) DISCHARGING

	DATE	TIME	
END OF SEA PASSAGE	-	-	ARRIVING DRAFT <u>2300 A 2400 M (sw) 2300 SAL</u>
PILOT ON BOARD	<u>19-4-74</u>	<u>15 05</u>	TUGS USED NAME: FROM TO:
ANCHORED	<u>17-4-74</u>	<u>1200</u>	1. _____
PRATIQUE GRANTED	-	-	2. _____
ANCHOR UP	<u>18-4-74</u>	<u>16 20</u>	3. _____
ANCHORED	<u>18-4-74</u>	<u>19 20</u>	4. _____
ANCHOR UP	<u>19-4-74</u>	<u>13 40</u>	BUNKERS FUEL <u>2737 L/</u> TONS WATER <u>300 L/</u> TONS
ALL FAST	-	-	ON ARRIVAL DIESEL <u>62 L/</u> TONS
NOTICE OF READINESS, TENDERED	-	-	CARGO GRADE 1 GRADE 2 GRADE 3
BALLAST HOSE CONNECTED	<u>20-4-74</u>	<u>08 35</u>	SHORE/SHIP GR. BELS <u>123.836</u> / / /
CARGO HOSE CONNECTED	<u>25-4-74</u>	<u>08 10</u>	SHORE/SHIP L/TONS <u>24.154</u> / / /
BALLAST STARTED ( <input checked="" type="checkbox"/> ) IN ( <input checked="" type="checkbox"/> ) OUT	<u>25-4-74</u>	<u>08 10</u>	RATE PER HR _____
BALLAST FINISHED	<u>25-4-74</u>	<u>13 30</u>	NUMBER OF GRADES WORKED SIMULTANEOUSLY _____
CARGO STARTED	<u>20-4-74</u>	<u>11 00</u>	BUNKERS FUEL _____ TONS WATER _____ TONS
CARGO FINISHED	<u>20-4-74</u>	<u>18 50</u>	RECEIVED DIESEL _____ TONS
CARGO STARTED	<u>20-4-74</u>	<u>20 45</u>	LEAVING DRAFT <u>F1606 A 2306 M (sw) 2000 SAL</u>
CARGO FINISHED	<u>21-4-74</u>	<u>01 35</u>	TUGS USED NAME: FROM TO:
CARGO STARTED	<u>23-4-74</u>	<u>16 20</u>	1. _____
CARGO FINISHED	<u>24-4-74</u>	<u>21 20</u>	2. _____
CARGO STARTED	<u>24-4-74</u>	<u>19 25</u>	3. _____
CARGO FINISHED	<u>25-4-74</u>	<u>08 00</u>	4. _____
BUNKERS STARTED	-	-	BUNKERS FUEL <u>2590 L/</u> TONS WATER <u>300 L/</u> TONS
BUNKERS FINISHED	-	-	ON SAILING DIESEL <u>62 L/</u> TONS
WATER STARTED	-	-	ACTUAL BALLAST TIME
WATER FINISHED	-	-	ACTUAL CARGO TIME
BALLAST HOSE DISCONN.	-	-	CARGO DELAYS SHIPS A/C
CARGO HOSE DISCONN.	<u>25-4-74</u>	<u>08 30</u>	CARGO DELAYS SHORE A/C
LEFT <u>///</u> Anchorage	<u>25-4-74</u>	<u>13 30</u>	TOTAL CARGO TIME
ANCHORED	<u>20-4-74</u>	<u>00 58</u>	TOTAL TIME UNDER REPAIRS
ANCHOR UP	<u>25-4-74</u>	<u>13 30</u>	TOTAL TIME - ALLFAST - TO - LEFT DOCK -
PILOT OFF	<u>25-4-74</u>	<u>21 50</u>	SAILED OUTWARD FOR <u>P.G. Orders</u> <u>JP-e DUE 25-4-74</u>
SEA PASSAGE STARTED	<u>25-4-74</u>	<u>22 00</u>	CARGO AVG TEMP
REMARKS - BEARER SPACES TO BE USED FOR INTER PORTIONS IN LOADING OR DISCHARGING			HOSES NO. SIZES
			SHORE LINE NO. SIZE LENGTH
			ACTUAL SHORE PRESS
			SHORE PRESS LIMIT
			SHIP DECK DELIVERY PRESSURE
			1. <u>1 x 8"</u>
			2. <u>1 x 6"</u>
			3. _____

## PORT LOG

April 17th 1974

08.00 : S.B.E. Started heaving up  
 08.15 : Anchor up  
 08.20 : F.S.A. proceeding to Recalada L/V anchorage  
 11.45 : Near Recalada anchorage  
 12.00 : Anchored ( 5 shackles)  
 24.00 : At Recalada L/V anchorage awaiting Pilot

April 18th 1974

09.30 : Tugboat alongside  
 10.00 : Taking stores-provisions  
 13.20 : Tug away  
 16.00 : S.B.E. Started heaving up  
 16.20 : Anchor up, proceeding to Recalada L/V  
 19.20 : Anchored ( 5 shackles)  
 19.30 : F.W.E. awaiting orders  
 24.00 : Anchored two miles from Recalada L/V/awaiting Pilot

April 19th 1974

00.01 : Awaiting Pilot at same position  
 13.15 : Started heaving up  
 13.40 : Anchor up  
 14.30 : Near to Recalada L/V awaiting Pilot  
 15.05 : Pilot on board Mr Oscar Fernandez  
 15.15 : F.S.A. proceeding to La Plata Roads

April 20th 1974

00.20 : S.B.E.  
 00.58 : Anchored ( 5 shackles)  
 10.10 : F.W.E. awaiting orders for discharging  
 07.05 : Arrival tanker "PECTEN"  
 07.35 : Berthed along sod side  
 08.15 : Started connecting 1 x 6" cargo hose  
 08.35 : Cargo hose connected. Awaiting "PECTEN" to deballast  
 11.00 : Cargo Started  
 18.50 : Cargo finished  
 18.55 : Started disconnecting cargo hose  
 19.05 : Cargo hose disconnected  
 19.15 : Started letting go "PECTEN"  
 19.35 : "PECTEN" away, awaiting "ESSO PARANA"  
 19.55 : "ESSO PARANA" Arrived  
 20.20 : Berthed along sod side  
 20.30 : Started connecting 1 x 6" cargo hose  
 20.40 : Cargo hose connected  
 20.45 : Cargo Started  
 24.00 : The discharging is continuing

April 21st 1974

01.35 : Cargo finished  
 01.40 : Started disconnecting cargo hose  
 01.50 : Cargo hose disconnected  
 03.25 : "ESSO PARANA" away, awaiting next lightership  
 24.00 : Awaiting for discharging

April 22nd 1974

00.01 : Awaiting for discharging  
 24.00 : Awaiting for discharging

Exhibit E Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

April 23rd 1974

00.01 : Waiting for discharging  
 15.30 : "ESSO PARANA" arrived  
 16.00 : Berthed along sdb side  
 16.08 : Started connecting 1 x 6" cargo hose  
 16.17 : Cargo hose connected  
 16.20 : Cargo started  
 21.20 : Cargo finished  
 21.25 : Started disconnecting cargo hose  
 21.35 : Cargo hose disconnected  
 23.15 : Started letting go "ESSO PARANA"  
 23.25 : "ESSO PARANA" away, waiting tanker "PECTEN"  
 24.00 : Waiting to discharge

April 24th 1974

18.10 : Arrival of lightership "PECTEN"  
 18.45 : Berthed along sdb side  
 18.55 : Started connecting 1 x 8" cargo hose  
 19.05 : Cargo hose connected, waiting "PECTEN" to decallast  
 19.25 : Cargo Started  
 19.40 : Cargo interrupted due very bad weather condition  
 20.20 : Cargo resumed  
 24.00 : The discharging is continuing

April 25th 1974

08.00 : Cargo Finished  
 08.10 : Started ballast in  
 08.20 : Started disconnecting cargo hose  
 08.30 : Cargo hose disconnected  
 09.00 : Pilot on board Mr. Hector R. Cavalleri  
 09.10 : Started letting go "PECTEN".  
 12.40 : S.B.E.  
 12.45 : "PECTEN" away. Started heaving up  
 13.30 : Anchor up. Ballast in finished  
 14.00 : Passing by Canal Punta de Indios  
 21.00 : Near to Recalada L/v  
 21.50 : Pilot off  
 22.00 : F.S.A. Started Sea passage IO9 A. Destination P.G. orders

The Ch. Officer  
 M. Kapellakis

The Master  
 K. Sardinis

ESSO			
MASS			
14 MAY 1974			
MASS			
MASS			

A 189

EXHIBIT F--INVOICE NO. 683 ANNEXED TO REPLY  
AFFIDAVIT OF THOMAS A. DILLON, JR.

DEBIT

92 FENCHURCH STREET

LONDON EC3M 4EB

Telegraphic Address

Inland "TRISTAR, TELEX, LONDON."

Foreign "TRISTAR, LONDON. EC3M 4EB

Telephone: 01-480 7971 (10 Lines)

6TH MAY

197 4

INVOICE NO. 683/14

VOY. 9

*M*ESSRS. HIDROCARBUROS Y DERIVADOS C.A.  
C/O: MESSRS. LONG QUINN & MCALEER INC.  
Dr. to

C. M. LEMOS & CO., LIMITED.

As agents only for owners

VAT. Reg. No. 243 1211 17

"TROPIC" C/P 27.1.1971.

Demurrage earned by subject  
vessel at Loading & Discharging  
ports, as per attached Laytime  
statement.

8Days 12Hours 33Mins or  
(8.522917 days) @ WS 145 \$15820.-  
per day =

\$ 143,355.47.

PLEASE REMIT TO:

FIRST NATIONAL CITY BANK  
336, Strand, London, W.C.2.

FOR ACCOUNT OF:

NEREUS SHIPPING S.A.  
Account No. 902-40-3.

AE/lak

REGISTERED IN ENGLAND: No. 410059, REGISTERED OFFICE: 92, FENCHURCH STREET, LONDON EC3M 4EB

A 190

Exhibit F Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

"TROPIC" C/P 27.1.1971 VOYAGE 9

LAYTIME ALLOWED TO LOAD/DISCHARGE 72 HOURS

RAS TANURA (LOADING PORT)

VESSEL ARRIVED FOR ORDERS	0542	7.2.74
N/R TENDERED	0542	"
VESSEL BERTHED LOADING BERTH	1405	15.2.74
COMMENCED LOADING	1540	15.2.74
COMPLETED LOADING	1035	16.2.74
HOSES DISCONNECTED	1110	16.2.74
LAYTIME COMMENCED	1142	7.2.74

CARO SAN ANTONIO (1ST DISCHARGING PORT)

VESSEL ARRIVED	0800	16.3.74
N/R TENDERED	0800	"
VESSEL BERTHED	0300	"
COMMENCED DISCHARGING	1220	"
COMPLETED DISCHARGING	1915	17.3.74
HOSES DISCONNECTED	1950	17.3.74
LAYTIME COMMENCED	0800	16.2.74

ALGECIRAS (2ND DISCHARGING PORT)

VESSEL ARRIVED	1030	4.4.74
N/R TENDERED	1030	"
VESSEL BERTHED	1325	"
COMMENCED DISCHARGING	1545	"
COMPLETED DISCHARGING	1550	5.4.74
HOSES DISCONNECTED	1650	5.4.74
LAYTIME COMMENCED	1030	4.4.74

		H	M	
7.2.74	1142-2400	12	18	
8.2.74	0000-2400	24	00	
9.2.74	0000-2400	24	00	
10.2.74	0000-2400	24	00	
11.2.74	0000-2400	24	00	
12.2.74	0000-2400	24	00	
13.2.74	0000-2400	24	00	
14.2.74	0000-2400	24	00	
15.2.74	0000-0900	09	00	
	0900-1405	-	-	BERTHING
	1405-2400	09	50	
16.2.74	0000-1110	11	10	
16.3.74	0800-2400	16	00	
17.3.74	0000-1950	19	50	COM.PART CARGO
4.4.74	1030-2400	13	30	
5.4.74	0000-1650	16	50	
TOTAL TIME USED		276	33	
TOTAL TIME ALLOWED		72	00	
TIME LOST		204	33	

DEMURRAGE: 8DAYS 12HOURS 33MINS or (8.522917 days)

@ US 145 \$16820.- per day = ~~XX~~  
U.S.\$143,355.47.

AE/lak  
6.5.74.

A 191

Exhibit F Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

TROPIC LIFE 15

RGS TANUR9

INV. 683/71

A 192

Exhibit F Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

TANKER TIME REPORT

Vessel : TROPIC

DWT: 85846

Place: RAS TANURA

Local Time GMT plus 3 hours

Date: 16/2/74

		<u>TIME STATEMENT</u>	
		<u>TIME</u>	<u>DATE</u>
ETA. NOTICE	..	1400	14
NOTICE OF READINESS TENDERED	..	1900	14
ALL FAST IN BERTH	..	1400	15
DOCTOR ON BOARD	..	1400	15
QUARANTINE FLAG DOWN	..	1400	15
BALLAST STARTED	..	-	-
BALLAST FINISHED	..	-	-
CARGO STARTED	..	1540	15
CARGO HOSE OFF	..	1110	16
VESSEL SAILED/LEFT PIER	..	1240	16

- Remarks :
1. Tug unavailable from 0900/15 to 1210/15 hrs.
  2. Hose handling from 1400/15 to 1505/15 hrs.
  3. Ship request lining up from 1505/15 to 1540/15 hrs.
  4. Ship request lining up from 0425/16 to 1110/16 hrs.

STATEMENT OF FACTS - RELACION DE HECHOS

16-3-74 08.00 ANCHORED AT LIGHTERAGE ZONE  
FONDEÓ EN ZONA DE ALIJO

10.05 M.T. PECTEN ALONGSIDE  
B.T. PECTEN AL COSTADO

11.00 HOSE CONNECTED (PECTEN)  
CONECTÓ MANGUERAS

12.20 COMMENCED DISCHARGING (PECTEN)  
COMENZÓ DESCARGA

16.40 M.T. ASTRACHUBUT ALONGSIDE  
B.T. ASTRACHUBUT AL COSTADO

17.30 HOSE CONNECTED (ASTRACHUBUT)  
CONECTÓ MANGUERA

17.35 COMMENCED DISCHARGING (ASTRACHUBUT)  
COMENZÓ DESCARGA.

18.20 FINISHED DISCHARGING (PECTEN)  
TERMINÓ DESCARGA

18.45 HOSE DISCONNECTED (PECTEN)  
DESCONECTÓ MANGUERA

20.00 "PECTEN" LEFT  
PECTEN DESAMARRÓ

22.00 PETROMAR RIO NEGRO ALONGSIDE  
PETROMAR RIO NEGRO AL COSTADO

22.30 HOSE CONNECTED (PETROMAR RIO NEGRO)  
CONECTÓ MANGUERA

22.40 COMMENCED DISCHARGING (PETROMAR RIO NEGRO)  
COMENZÓ DESCARGA.

17-3-74 01.50 FINISHED DISCHARGING (ASTRACHUBUT)  
TERMINÓ DESCARGA.

02.20 HOSE DISCONNECTED (ASTRACHUBUT)  
DESCONECTÓ MANGUERA.

05.00 FINISHED DISCHARGING (PETROMAR RIO NEGRO)  
TERMINÓ DESCARGA

05.40 HOSE DISCONNECTED (PETROMAR RIO NEGRO)  
DESCONECTÓ MANGUERA

06.45 UNBERTHED (PETROMAR RIO NEGRO)  
DESAMARRÓ

07.55 ASTRACHUBUT LEFT  
ASTRACHUBUT DESAMARRÓ

Exhibit F Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

## PORT LOG

FEB. 14th 1800 SBE. Ended sea passage No 74 A.

→ 1900 Dropped the Stbd anchor near sea buoy. NOTICE OF READINESS TENDERED.

1912 F.W. Engine.

FEB. 15th 0854 S.B.Engine.

→ 0900 Anchor up.

1210 Two pilots on board Mr SCHULZ, Mr SHAHRANU.

1212 Two Tugs fasted "PARJAN 1" and "ABQAIQ 6".

1300 First rope at sea island No 3, Berth No 18.

1345 F.W.Engine.

1400 Tugs away.

→ 1405 All fasted.

1410 Pilots disembarked.

1515 Cargo tanks inspected. Dry Certificate signed.

1525 Cargo hoses connected.

→ 1530 Started diballasting.

→ 1535 Commenced Loading.

1615 Free Pratique.

→ 2205 Completed diballasting.

FEB. 16th 0300 Bunker hose connected.

0305 Started Bunkering. (FUEL OIL)

0330 Completed Loading.

→ 0500 Cargo hoses disconnected.

0750 Diesel oil hose connected.

0835 Started receipt Diesel oil.

0945 Completed fuel oil.

→ 1035 " Diesel oil.

1130 Bunker hoses disconnected.

1215 Pilot on board Mr SAAD.

1218 S.B.Engine.

1222 Two Tugs fasted. "GULF MASTER" & "ABQAIQ 4".

1223 Started letting go.

1230 All clear.

1240 Tugs away.

1314 Pilot disembarked.

1400 Started sea passage No 74 B.-

Elia Ch. Officer  
D. BALIAS

[Signature] MASTER

A 195

Exhibit F Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

VITALIS L. A. MILANOWSKI

25 DE MAYO 460, BUENOS AIRES

2.-

17-3-74

08.30 M.T. KALINGA ALONGSIDE  
B.T. KALINGA AL COSTADO

09.00 M.T. ESSO CHACO ALONGSIDE  
B.T. ESSO CHACO AL COSTADO

09.15 HOSE CONNECTED (KALINGA)  
CONECTÓ MANGUERA

09.30 COMMENCED DISCHARGING (KALINGA)  
COMENZÓ DESCARGA

10.25 HOSE CONNECTED (ESSO CHACO)  
CONECTÓ MANGUERA

10.35 COMMENCED DISCHARGING (ESSO CHACO)  
COMENZÓ DESCARGA

16.10 FINISHED DISCHARGING (ESSO CHACO)  
TERMINÓ DESCARGA

17.00 HOSE DISCONNECTED (ESSO CHACO)  
DESCONECTÓ MANGUERA

18.00 ESSO CHACO LEFT  
ESSO CHACO DESAMARRÓ

19.15 FINISHED DISCHARGING (KALINGA)  
TERMINÓ DESCARGA.

19.50 HOSE DISCONNECTED (KALINGA)  
DESCONECTÓ MANGUERA

20.30 KALINGA LEFT  
KALINGA DESAMARRÓ.

P.P. VITALIS L. A. MILANOWSKI

ENRIQUE A. LÓPEZ

A 196

Exhibit F Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

TROPIC LIFT. 15

9LGEICR9S 4-5 APRIL 1974

INV. 683/74

A 197

Exhibit F Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

M/T TROPIC  
Monrovia

EEG.	
TRAS.	ENG.
- 9 APR 1974 4-4-74 197	
OPS.	✓
ACC.	
SHIP.	

Port of ALGECIRAS

Messrs

CEPSA  
ALGECIRAS

Dear Sirs

I hereby beg to tender you the M/T TROPIC.  
As being ready in all respects to commence the discharging of  
her gargo as mentioned below, lay hours will commence upon vesse's  
arrival in berth has been provided within six (6) hours of the  
receipt of this Notice, otherwise lay hoyrs will commence at expiration  
of six(6) hours after the receipt of this Notice

Cargo: Consists of Arabian Light Crude

Date 4-4-74 Hour... 13 25 .....

Accepted at... 1355  
By... CEPSA

Yours Very Truly  
Capt. A. Mavrelos/Master

A 198

Exhibit F Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

## PORT DISPATCH REPORT

PO FORM 30

SS TROPIC MONROVIA VOY. NO 74 B PORT ALGECIRAS SPAIN DATE APR. 6 1974  
 ARRIVING INWARD FROM RASTANNURA Via C.S. ANTONIO DATE LEFT FEB 16th 74 DAYS ENROUTE 44 d 19 h  
 TERMINAL 21 MAY 1974  
 ( ) LOADING  
 (X) DISCHARGING

TIME	DATE	TIME
ARRIVING	Apr. 4	1000
PILOT ON BOARD	4	1040
ANCHORED		
PRATIQUE GRANTED	4	1430
ANCHOR UP		
ANCHOR DOWN		
ANCHOR UP		
ALL FAST	4	1325
STATE OF READINESS, TENDERED	4	1325
BALLAST HOSE CONNECTED		
CARGO HOSE CONNECTED	4	1505
BALLAST STARTED (X) IN ( ) OUT	5	1625
BALLAST FINISHED	5	2320
CARGO STARTED	4	1545
CARGO FINISHED	5	1545
BUNKERS STARTED		
BUNKERS FINISHED		
WATER STARTED	4	1410
WATER FINISHED	4	2130
BALLAST HOSE DISCONN.		
CARGO HOSE DISCONN.	5	1740
LEFT DOCK	5	2310
ANCHORED		
ANCHOR UP		
PILOT OFF	5	2345
SEA PASSAGE STARTED	6	0030

REMARKS \* BLANK SPACES TO BE USED FOR INTERRUPTIONS  
 IN LOADING OR DISCHARGING

ARRIVING DRAFT F 20' A 31' M(sw) SAL 25' 06"

TUGS USED NAME: FROM TO:

1. LA LINEA 11 42 13 10

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

BUNKERS FUEL 1068 TONS WATER 350 TONS

ON ARRIVAL DIESEL 240 TONS

CARGO GRADE 1 GRADE 2 GRADE 3

SHORE SHIP GR. 1 294.155 / /

SHORE SHIP L/TONS 39.176, 16 / /

RATE PER HR 2000

NUMBER OF GRADES WORKED SIMULTANEOUSLY \_\_\_\_\_

BUNKERS FUEL - TONS WATER 180 TONS

RECEIVED DIESEL - TONS

LEAVING DRAFT F 26' A 32' M(sw) SAL 26'

TUGS USED NAME: FROM TO:

1. LA LINEA 22 47 23 29

2. SAN ROQUE 22 47 23 20

3. \_\_\_\_\_

4. \_\_\_\_\_

BUNKERS FUEL 1018 TONS WATER 490 TONS

ON SAILING DIESEL 233 TONS

	D	H	M
ACTUAL BALLAST TIME		06	55
ACTUAL CARGO TIME		24	00
CARGO DELAYS SHIPS A/C			
CARGO DELAYS SHORE A/C			
TOTAL CARGO TIME		24	00
TOTAL TIME UNDER REPAIRS			
TOTAL TIME "ALLFAST" TO "LEFT DOCK"	1	09	45

SAILED OUTWARD FOR: P;G orders DATE DUE Apr. 6th 74

CARGO	AVG TEMP.	HOSES NO. SIZES	SHORE LINE NO. SIZE LENGTH	ACTUAL SHORE PRESS	SHORE PRESS LIMIT	SHIP DEL. PRESS.
1. 65F		2x12"				
2.						
3.						

A 199

Exhibit F Annexed to Reply Affidavit of Thomas A. Dillon, Jr.

# PORT LOG

APRIL 4th 10 00 SBE. Ended sea passage No 74 B.  
 10 40 Pilot on board Mr. HERNADEZ.  
 11 42 Tug LA LINEA fasted.  
 11 56 Dropped the Anchor.  
 12 00 First line ashore.  
 13 00 FWE. Pilot disembarked.  
 13 10 Tug away.  
 13 25 All fasted. Notice of readiness tendered.  
 13 55 Port authorities on board. Notice of readiness accepted.  
 14 10 Water hose connected. Started watering.  
 14 30 Free pratique.  
 14 32 Taken ullages cargo calculated.  
 15 05 Cargo hoses connected.  
 15 45 Commenced discharging.  
 21 30 Completed Watering.  
 " 5th 15 45 Completed discharging.  
 16 15 Cargo tanks inspected.  
 16 20 Dry certificate signed.  
 16 25 Started ballasting.  
 17 40 Cargo hoses disconnected.  
 22 30 SBE. Pilot on board Mr. PONONIA.  
 22 45 Started letting go. Started heaving up.  
 22 47 Two tugs fasted. LA LINEA, SAN ROQUE.  
 23 10 All Clear.  
 23 20 Tug SAN ROQUE away.  
 23 29 Tug LA LINEA away.  
 23 30 Completed ballasting Anchor up.  
 23 45 Pilot disembarked.  
 " 6th 00 30 Full away Started sea passage No 75 A.

R.F.			
G.D.C.			
TUGS.		ENG.	
21 MAY 1974			
PLANS		ETA	
CHART.		NO	

THE MASTER



A 200

EXHIBIT G--TELEX DATED MAY 20, 1974 ANNEXED TO REPLY  
AFFIDAVIT OF THOMAS A. DILLON, JR.

M  
GA  
39523230+P  
232349 TRI UR  
23 1936 153534  
23280 HIDECA  
VRCA 10667 1836  
GA  
HIDECA  
CARACAS

PA  
Hiden  
CUT  
MAY 22 1974 6:39

OWNERS URGENTLY REQUEST IMMEDIATE PAYMENT OF THE BELOW LISTED  
OUTSTANDINGS:

VESSEL	LIFT NBR	INV	DESCRIPTION	AMOUNT
POETIC	13	416/11-3-74	PORT CHGS	DLRS 344.74
MAJESTIC	14	254/12-2-74	DEMURRAGE	" 68,529.18
MAJESTIC	14	265/13-2-74	WAR RISK	" 15,000.00
TROPIC	15	683/6-5-74	DEMURRAGE	" 143,355.47
MAJESTIC	16	641/30-4-74	DEMURRAGE	" 143,797.20
MAJESTIC	16	728/16-5-74	INTEREST	" 3,930.92
TOTAL DLRS				374,957.51

IF IMMEDIATE SETTLEMENT IS NOT PRACTICAL, OWNERS WOULD APPRECIATE  
A FURTHER ADVANCE OF DLRS 275,000.00 PENDING YOUR FINALIZATION OF  
THESE ACCOUNTS

TRISHORE

23280 HIDECA  
232349 TRI UR.....  
0002.4

7

CE

FURTHER REPLY AFFIDAVIT OF DAVID L. MALOOF IN  
SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION  
AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
HIDROCARBUROS Y DERIVADOS, C.A.

Plaintiff,

- against -

NEREUS SHIPPING, S.A. and  
COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Defendants.

:  
:  
:  
: 75 Civ. 463 (C.E.S.)  
:

: FURTHER REPLY AFFIDAVIT  
: IN SUPPORT OF PLAINTIFF'S  
: MOTION FOR A STAY

:

-----X

DAVID L. MALOOF, being duly sworn, deposes and says:

1. This affidavit is submitted in reply to the affidavit of Thomas A. Dillon, Jr., dated March 3, 1975 and the Reply Brief of defendant Nereus Shipping, S.A. ("Nereus") submitted therewith. Mr. Dillon's affidavit (and defendant's brief in large part) apparently set forth a further outline of specific claims Nereus will be making against plaintiff Hidrocarburos y Derivados, C.A. ("Hideca") when arbitration proceedings commence.

2. It is abundantly clear from all papers submitted in support of and in opposition to the instant motion that Hideca has claims against Nereus and Nereus has claims against Hideca and both dispute many factual and legal questions surrounding the contract of affreightment dated January 27, 1971

*Further Affidavit of David L. Maloof*

between Nereus as Owners and Hideca as Charterer with a letter of guaranty by Compania Espanola de Petroleos, S.A. ("Cepsa").

3. Suffice it to say that Hideca denies and continues to deny Nereus' version of the facts and issues. The affidavit of Lawrence W. Newman dated February 20, 1975 pointed out some earlier factual inaccuracies and misstatements by Nereus and was characterized by Nereus' Reply Brief (at p. 8) as "irrelevant". The lengthy factual allegations of Mr. Dillon in his affidavit of March 3, 1975 concerning the Moroccan attachment are irrelevant and the question of whether or not the purported attachment in Morocco was proper or not is one of the claims for which Hideca instituted its arbitration against Nereus and cannot be determined here on the basis of attorneys' affidavits, but only after full arbitration with witnesses and documents presented and the issues fully briefed. These and other facts and issues which go to the merits of both parties' claims cannot be determined here but certainly no allegation of Nereus in its affidavits or memorandums of law should be deemed admitted by Hideca.

4. The basic situation seems to have been lost. There is only one charter party involved and it is between Nereus as Owner and Hideca as Charterer with Cepsa having executed a "Letter of Guaranty" which provides:

"should Hideca default in payment or performance of its obligations under the Charter Party we will perform the balance of the contract and assume the rights and obligations of HIDECA on the same terms and conditions as contained in the Charter Party." (emphasis supplied)

Hideca is seeking a stay of the later instituted Nereus/Cepssa arbitration pending the outcome of the Hideca/Nereus arbitration for the reasons stated at length in Hideca's moving papers and Hideca's reply affidavits and Memorandum of Law.


5. Nereus now contends that it has two separate causes of action against two separate parties, both of whom were obligated to perform separate duties independently under the contract. However, what Nereus asserts as facts are in fact the very issues which will be determined. Whether or not Hideca defaulted, and whether or not Cepssa had any resulting obligation under the contract of affreightment are of course the basic issues to be determined in both arbitrations. This, of course, is why your Honor's suggestion that this is a case for the application of the doctrine of consolidated arbitrations is so appropriate.

6. Mr. Dillon in his second reply affidavit has raised a transparently false issue requesting Hideca to post a security bond. This implies that Nereus will be in a weaker position in execution of a judgment in case your Honor orders a consolidated arbitration than if it proceeds solely against Cepssa.

As a matter of fact, the consolidated arbitration gives Nereus all it could ever have requested -- both defendants in one proceeding. If Nereus should prevail, it has judgment against both defendants and can execute against either or both.

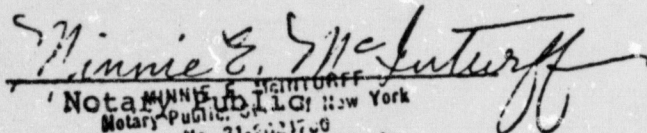
## Further Affidavit of David L. Maloof

For the foregoing reasons, the deponent respectfully requests this court either to grant the original relief sought that the Nereus/Cepssa arbitration be stayed until the Hideca/Nereus arbitration is concluded or, in the alternative, that consolidated arbitration be ordered or agreed to with Nereus, Hideca and Cepssa each choosing one arbitrator and those three arbitrators choosing two others.

  
David L. Maloof

Sworn to before me this

5<sup>th</sup> day of March, 1975

  
Minnie E. McInturff  
Notary Public, State of New York  
No. 31-2021700  
Qualified in New York County  
Commission Expires March 30, 1975

AFFIDAVIT OF PATRICK V. MARTIN IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x		
	:	
HIDROCARBUROS Y DERIVADOS, C.A.	:	
	:	75 Civ. 463
Plaintiff	:	
	:	
- against -	:	AFFIDAVIT IN SUP-
	:	PORT OF PRELIM-
NEREUS SHIPPING, S.A. and	:	INARY INJUNCTION
COMPANIA ESPANOLA DE PETROLEOS, S.A.	:	AND TEMPORARY RE-
	:	STRAINING ORDER
Defendants	:	
-----x		

PATRICK V. MARTIN, being duly sworn, deposes and  
says:

1. That I am an attorney duly admitted to practice before this Honorable Court and a member of the firm of Poles, Tublin, Patestides & Stratakis, attorneys for the defendant, COMPANIA ESPANOLA DE PETROLEOS, S.A. (CEPSA), and am familiar with these proceedings.
2. This affidavit is submitted in support of the Plaintiff's motion for a stay of the arbitration proceedings between CEPSA and Nereus and in reply to the affidavits of Mr. Dillon in opposition thereto.
3. From the affidavits of Mr. Dillon dated February 19, and March 3, 1975, that of Demetrios Zistris, dated July 26, 1974, and Raymond J. Burke, Jr., dated July 26, 1974, (both part of Exhibit 5 of Mr. Dillon's February 19, affidavit), the af-

fidavit of Demetrial Zistris of November 25, 1974 (exhibit 6 of Mr. Dillon's February 19, 1975 affidavit) on behalf of Nereus and the affidavits of Lawrence Walker Newman, dated February 20, 1975, and David L. Maloof, dated January 30, 1975, on behalf of HIDECA, it is abundantly clear that CEPASA would be irrevocably harmed and prejudiced if the CEPASA/Nereus Arbitration were allowed to proceed first. There are several reasons for this.

Nereus claims that HIDECA failed to pay the earned freight on the seventeenth voyage under the COA. This failure gave rise to a "default" under the COA. The "default" then triggered CEPASA'S obligations under the Guaranty. HIDECA denies that it is default and has vehemently objected to the actions taken by Nereus and asserts that Nereus acted improperly, thus legally permitting HIDECA to withhold the freight.

In his affidavit of January 30, 1975, Mr. Maloof at page 2, speaks of the "guilt", "bad faith" and "unbelievable conduct" of Nereus. At point 10 of his affidavit of February 20, 1975, Mr. Newman disputes in detail the erroneous factual assertions of Mr. Dillon.

CEPSA has no way of determining the merits of the factual issues in the disputes between HIDECA and Nereus. It was neither the "owner" nor the "charterer" nor in any way connected with the voyage. In fact, the voyage was from Ras -

Tanura to Mohammedia, Morocco, which was outside the discharge range specified in the charter. Article D of Part 1 of the COA. (exhibit A to the affidavit of Mr. Maloof of January 30, 1975 states:

**"Discharging Ports:**

One (1) or two (2) safe ports United Kingdom or Continent, Gibraltar Hamburg Range, option Scandinavia within Institute Warranties Limits one (1) or two (2) safe ports Mediterranean excluding Israel and Egypt option Canary Islands but always excluding Communist or Communist controlled countries."

Mohammedia is on the west coast of Africa. Thus, the voyage which has given rise to these proceedings was one which was outside the express limits of the COA.

Nereus' falling out with HIDECA seems to have been precipitated by matters with which CEP SA was not involved. Attached hereto as CEP SA'S exhibit I is a copy of the Nereus complaint in action 74 Civ. 3235. The complaint sets forth six causes of action against HIDECA for alleged breaches of the COA on voyages thirteen, fourteen, fifteen, sixteen and seventeen. Upon information and belief, CEP SA had nothing to do with these voyages. The sixth cause of action seeks damages in the amount of \$3,000,000.00 for the alleged "... wrongful termination of the COA by Defendant [HIDECA]". This is the same sum sought by Nereus from HIDECA under the Guaranty.

It is obvious from the papers and affidavits before this court, that we are seeing the mere tip of a large iceberg of factual issues in the continued disputes between Nereus and HIDECA. It is now apparent that there were many changes, waivers, alterations and amendments in the COA which CEP SA has guaranteed. Such changes in performance under the COA may well excuse CEP SA from its obligations under the Guaranty.

The facts surrounding the foregoing disputes are not known to CEP SA. CEP SA is not in a position to defend the Nereus charges or avail itself of defenses against the Nereus claims under the Guaranty, unless all the facts are first brought out at a full and complete arbitration between Nereus and HIDECA. Nereus obviously wishes to press the arbitration against the uninformed CEP SA, rather than against HIDECA, who would be able to defend and refute the Nereus claims.

Nereus seeks to justify this unconscionable tactic by asserting that the damages sought against HIDECA arose before the "default" while those sought against CEP SA arose after the "default". This argument is refuted by its own papers.

By its own terms, the COA has expired, except for the disputes between the parties. Thus, Nereus is only seeking money damages from CEP SA in the approximate amount of \$3,000,000.00, for alleged failure to perform the balance of

the COA. It is also seeking the same damages, plus additional sums, from HIDECA (see the complaint annexed hereto as Exhibit I). Therefore, as a practical matter, CEPSA'S obligations under the Guaranty have been reduced to pay damages in the event HIDECA cannot. Since Nereus is seeking the same money damages from both the obligor, HIDECA, and the guarantor, CEPSA, there is no doubt that the orderly administration of justice and essential elements of fair play require that the arbitration between Nereus and HIDECA should proceed first. If Nereus instituted separate proceedings in this court against CEPSA and HIDECA, asserting essentially the same claims and seeking essentially the same relief, this court, undoubtedly would either stay the proceedings against the guarantor or order a consolidation of the two suits. In the case at bar, since Nereus does not wish to consolidate the proceedings, this court should stay the arbitration proceedings between Nereus and CEPSA and order Nereus and HIDECA to proceed forthwith to arbitration.

This court should also bear in mind the three arbitrators in the Nereus/CEPSA arbitration have been hand-picked by the attorneys for Nereus. Nereus directly appointed Mr. Nelson and Mr. Arnold, who appointed Mr. Berg. Thus, not only is CEPSA unaware of the facts, Nereus seeks to have the issues determined before a Nereus picked tribunal.

A 210

*Affidavit of Patrick V. Martin*

Under such circumstances, the right of CEPSA to a complete, fair and impartial determination of the issues may be seriously diluted.

It is respectfully requested that this court grant the motion of HIDECA and enjoin any further proceedings in Nereus/CEPSA arbitration pending completion of the arbitration between Nereus and HIDECA.



Patrick V. Martin

Sworn to before me this  
6<sup>th</sup> day of March, 1975.

*Robert de Monte Dore*  
Notary Public

NOTARY PUBLIC  
STATE OF NEW YORK  
COMMISSION EXPIRES 12/31/76

To: Burke & Parsons  
52 Wall Street  
New York, New York 10005

Donovan, Donovan, Maloof & Walsh  
161 William St.  
New York, New York 10038

Baker & McKenzie  
375 Park Avenue  
New York, New York 10022

A 211

EXHIBIT I--COMPLAINT (NEREUS VS. HIDECA) ANNEXED TO  
AFFIDAVIT OF PATRICK V. MARTIN

JUDGE METZNER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

24 CIV. 3235

NEREUS SHIPPING, S.A., as Agents  
for Owners,

Plaintiff,

-against-

HIDROCARBUROS Y DERIVADOS, C.A.,

Defendant.

COMPLAINT

74 Civ.

S.D. OF N.Y.

FILED  
U.S. DISTRICT COURT  
JUL 26 3 23 PM '74

Plaintiff, as and for its complaint herein, alleges  
as follows:

1. This is a case of admiralty and maritime jurisdiction and is an admiralty and maritime claim within the meaning of Rule 9(h) as hereinafter more fully appears.
2. At all of the times hereinafter mentioned, Plaintiff, NEREUS SHIPPING, S.A., was and now is a corporation organized and existing under and by virtue of the laws of Liberia with an office and principal place of business at 35-39 Akti Miaouli, Piraeus, Greece and it was and still is the Agent for Owners of various vessels.
3. At all of the times hereinafter mentioned, Defendant HIDROCARBUROS Y DERIVADOS, C.A. was and now is a corporation organized and existing under and by virtue of the laws of Venezuela with an office and place of business at Apartado 59021, Caracas, Venezuela.

AS AND FOR A FIRST CAUSE OF ACTION

4. On or about January 27, 1971, Plaintiff, as Agent for Owners of various vessels, and Hidrocarburos Y Derivados, C.A., as Charterer (hereinafter referred to as "Defendant"), entered into a contract of affreightment for the carriage of crude and/or dirty petroleum products and/or harmless dry bulk commodities in trade between Persian Gulf excluding Fao and Abadan and United Kingdom or Continent, Gibraltar Hamburg Range, option Scandinavia within Institute Warranty Limits or one or two safe ports Mediterranean excluding Israel and Egypt option Canary Islands but always excluding all Communist or Communist controlled countries (hereinafter referred to as the "COA"), a copy of which is annexed hereto and made a part hereof as Exhibit A.

5. The COA required Plaintiff, as Agent for Owners, to lift 600,000 long tons of cargo, 10% more or less per year at Owners' option, fairly evenly spread for a period of three years.

6. On or about October 26, 1973, pursuant to instructions received from Defendant, the S.S. POETIC performed the thirteenth lifting under the COA and properly loaded at Ras Tanura and discharged on November 28, 1973 at La Curona. As a result of that voyage, Plaintiff incurred port expenses of \$344.18, which money Defendant has agreed to reimburse under the COA.

7. Defendant is liable to Plaintiff under the terms of the COA for reimbursement of port expenses in the amount of \$344.18, no part of which has been paid, although duly demanded.

AS AND FOR A SECOND CAUSE OF ACTION

8. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 5 herein.

9. Clause 7 of the COA provides as follows:

"7. HOURS FOR LOADING AND DISCHARGING. The number of running hours specified as laytime in Part I shall be permitted the Charterer as laytime for loading and discharging cargo; but any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to load or discharge cargo within the time allowed shall not count as used laytime. If regulations of the Owner or port authorities prohibit loading or discharging of the cargo at night, time so lost shall not count as used laytime; if the Charterer, shipper or consignee prohibits loading or discharging at night, time so lost shall count as used laytime. Time consumed by the vessel in moving from loading or discharge port anchorage to her loading or discharge berth, discharging ballast water or slops, will not count as used laytime."

Paragraph H of Part I of the COA provides as follows:

"H. Total Laytime in Running Hours: 72 hours weather working excluding Sundays and holidays unless used."

10. Clause 8 of the COA provides as follows:

"8. DEMURRAGE. Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. If, however, demurrage shall be incurred at ports of loading and/or discharge by reason of fire, explosion, storm or by a strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo, the rate of demurrage shall be reduced one-half of the amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by strike, lockout, stoppage or restraint of labor for Master, officers and crew of the Vessel or tugboat or pilots."

Paragraph F of Part I of the COA provides as follows:

*Exhibit I Annexed to Affidavit of Patrick V. Martin*

"F. Freight Rate: Worldscale One Hundred and Thirty (WS 130) (See Clause Six) per ton (of 2240 lbs. each)."

Typewritten Clause 6 of the COA provides as follows:

"Freight rate, extras and demurrage to be paid at the rate of Worldscale One Hundred and Thirty (WS.130) in accordance with Worldscale rates in effect on loading date."

Paragraph I of Part I of the COA provides as follows:

"I. Demurrage per day: Per the Worldscale allowance, based upon the nominated vessel's deadweight plus thirty (30) percent."

11. Typewritten Clause 5 of the COA provides as follows:

"Any increase in War Risk Insurance premiums on vessel and/or crew and/or Crew War Bonuses over those in effect as of date of this contract to be for Charterer's account."

12. Pursuant to instructions from Defendant, the MAJESTIC performed the fourteenth lifting under the COA and completed loading at Ras Tanura on January 2, 1974 and completed her discharge at La Plata on February 7, 1974. As a result of loading at Ras Tanura, which was a breach of the Vessel's Institute Warranties under the Vessel's hull insurance policy, the Owners were assessed an additional war risk premium in the amount of \$15,000.00, which amount is owed by Defendant. In addition, as a result of the time used in loading and discharging, Plaintiff is entitled to demurrage in the amount of \$68,529.18.

13. Defendant is liable to Plaintiff under the terms of the COA for demurrage and war risk premiums in the amount of \$83,529.18, no part of which has been paid, although duly demanded.

AS AND FOR A THIRD CAUSE OF ACTION

14. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 5 herein.

15. Pursuant to instructions from Defendant, the TROPIC performed the fifteenth lifting under the COA. The Vessel completed loading at Ras Tanura on February 16, 1974 and got underway for La Curona. Prior to her arrival at La Curona, the Vessel was directed by Defendant to deviate to Cabo San Antonio and Algeciras. The Vessel completed discharging on April 5, 1974. Under the provisions of the COA, deviation expenses in the amount of \$30,032.26 are owed by Defendant.

16. Under the provisions of Clause 8 of the COA, demurrage in the amount of \$143,355.47 was earned by the TROPIC.

17. Defendant is liable to Plaintiff under the terms of the COA for deviation expenses and demurrage in the total amount of \$173,387.73, no part of which has been paid, although duly demanded.

AS AND FOR A FOURTH CAUSE OF ACTION

18. Clause 2 of the COA provides, in part, as follows:

"FREIGHT. Payment of freight shall be made by Charterer without discount upon delivery of cargo at destination \* \* \* ."

19. Pursuant to instructions from Defendant, the MAJESTIC performed lifting number 16. The Vessel completed loading at Ras Tanura on March 10, 1974 and completed discharging on April 25, 1974. Although the freight was due on April 25, 1974, freight was not paid until May 13, 1974 and \$3,930.92

*Exhibit I Annexed to Affidavit of Patrick V. Martin*

in interest was earned by Owners as a result of the late payment of freight. Under the provisions of Clause 8 of the COA, demurrage in the amount of \$143,797.20 was earned by the Vessel.

20. Defendant is liable to Plaintiff under the terms of the COA for late payment of freight interest and for demurrage in the total amount of \$147,728.12, no part of which has been paid, although duly demanded.

AS AND FOR A FIFTH CAUSE OF ACTION

21. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 5 herein.

22. Pursuant to instructions from Defendant, the MAJESTIC performed lifting number 17. The Vessel completed loading at Ras Tanura on June 4, 1974 and discharged her cargo of 64,164.64 long tons of crude oil at Mohammedia on July 11, 1974. Under the provisions of Clause 2 of the COA, freight in the amount of \$770,424.17 was earned by the Vessel. Under the provisions of Clause 8, demurrage in the amount of \$61,432.29 was earned by the Vessel.

23. Defendant is liable to Plaintiff under the terms of the COA for demurrage and freight in the total amount of \$831,856.46, no part of which has been paid, although duly demanded.

AS AND FOR A SIXTH CAUSE OF ACTION

24. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 5 herein.

*Exhibit I Annexed to Affidavit of Patrick V. Martin*

25. Typewritten Clause 1 of the COA provides as follows:

"This Contract of Affreightment will remain in full force and effect for a total quantity of 600,000 long tons ten (10) percent more or less per year at Owner's option fairly evenly spread for a period of three (3) years."

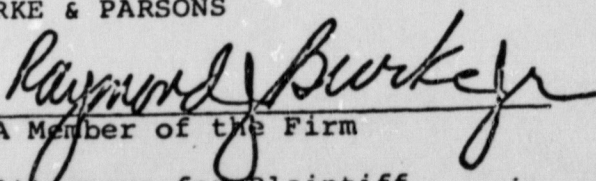
26. Under the terms of the COA, Defendant was required to accept the nomination of a vessel from Plaintiff in accordance with the terms of Clause 1 of the COA. Nevertheless, Defendant has refused to accept the nomination of the TROPIC to perform the eighteenth lifting.

27. As a result of Defendant's breach of the COA by refusing the nomination of the TROPIC to perform the eighteenth lifting and by the non-payment of freight due on the seventeenth lifting, Plaintiff has invoked the guarantee provisions of the COA, demanding that the guarantor, Compania Espanola de Petroleos, S.A., perform the balance of the COA.

28. By reason of the wrongful termination of the COA by Defendant, Plaintiff will suffer damages in the amount of \$3,000,000.00, as near as can be presently ascertained, no part of which has been paid by Defendant.

WHEREFORE, Plaintiff NEREUS SHIPPING, S.A., demands judgment in its favor against Defendant HIDROCARBUROS Y DERIVADOS, C.A. on the First, Second, Third, Fourth, Fifth and Sixth causes of action herein in the total amount of \$4,236,845.67, together with interest and costs.

BURKE & PARSONS

By   
A Member of the Firm

Attorneys for Plaintiff  
52 Wall Street  
New York, New York 10005  
(212) 344-1030

(Verified)

MEMORANDUM-OPINION OF STEWART, D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

HIDROCARBUROS Y DERIVADOS, C.A.,

Plaintiff,

-against-

NEREUS SHIPPING, S.A. and  
COMPANIA ESPANOLA DE PETROLEOS,  
S.A.,

Defendants.

----- x

In the Matter of the Arbitration  
between HIDROCARBUROS Y  
DERIVADOS, C.A.,

Petitioner,

-against-

NEREUS SHIPPING, S.A.,

Respondent.

----- x

MEMORANDUM AND ORDER

STEWART, DISTRICT JUDGE:

Upon consideration of the affidavits and memoranda submitted and the hearings held before this court, we order the consolidation of the pending arbitration proceedings between Nereus Shipping, S.A. ("Nereus") and Compania Espanola

de Petroleos, S.A. ("Cepsa"), on the one hand, and Nereus and Hidrocarburos Y Derivados, C.A. ("Hideca"), on the other.<sup>1/</sup> There is sufficient power in a federal district court to compel consolidation of two related arbitration proceedings, under Rules 81(a)(3) and 42(a) of the Federal Rules of Civil Procedure, and under 9 U.S.C. §4, even where the agreements to arbitrate are embodied in separate contracts (although there is one common party to both agreements), and neither of the separate contracts provide for consolidated arbitration. Robinson v. Warner, 370 F. Supp. 828 (D. R.I. 1974). See also Vigo Steamship Corp. v. Marship Corp., 26 N.Y.2d 157, 309 N.Y.S.2d 165 (1970) (dictum).

---

<sup>1/</sup> The facts surrounding these cases are set forth in our memorandum of December 18, 1974, in the related case of Compania Espanola de Petroleos, S.A. v. Nereus Shipping, S.A., 74 Civ. 5102. The clerk is directed to file a copy of the instant memorandum and order with the file in that case.

Here the case for consolidation is even stronger. Instead of two separate contract agreements, there is but a single charter agreement between Nereus and Hideca, with a guarantee by Cepsa embodied in Addendum 2 of the Hideca-Nereus agreement.

We believe that consolidation would be advantageous, since it would avoid the additional time and expense of separate proceedings in two matters involving common questions of law and fact. In addition, consolidation would avoid the possibility that one of the parties would be subject to inconsistent results. Robinson v. Warner, *supra*, at 829. Moreover, we do not believe that any party will be prejudiced by a consolidation of the two arbitration proceedings. While it is true that Nereus gained an apparent tactical advantage in appointing two arbitrators who in turn appointed a third arbitrator in the Nereus-Cepsa dispute, Nereus will be assured of an impartial arbitral tribunal by our decision to consolidate. The mere tactical advantage Nereus gained by Cepsa's previous unwillingness to accede to arbitration should not militate against consolidation in the absence of a specific showing that consolidation will be prejudicial to "a substantial right." As the New York Court of Appeals has noted in a similar admiralty case, "the mere desire to have one's dispute heard separately does not, by itself, constitute a 'substantial right.'" Vigo Steamship Corp. v. Marship Corp., 26 N.Y.2d 157, 162, 309 N.Y.S.2d 165, 168 (1970). (citation omitted).

While both Hideca and Cepsa are agreeable to consolidation of the two arbitration proceedings, Nereus is not. Nereus contends that there is no precedent for consolidating two arbitration proceedings where the party common to both proceedings opposes consolidation. Although we have found no case ordering consolidation in such circumstances, we do not believe that this court is without power, in its discretion, to order consolidation where common questions of law or fact are present. It is also within our discretion, we believe, to order consolidation before a panel of five arbitrators, even though the parties originally agreed to arbitrate their disputes before a panel of three. See Showa Shipping Co., Inc. v. Skibs A/S Agnes, etc., (Sup. Ct., Sp. Term, N.Y. Cty. 1975). It is thus

ORDERED, that the two said arbitrations are hereby consolidated for all purposes and all claims of the three parties shall be heard in said consolidated arbitration before one panel of arbitrators; and it is further

ORDERED, that the arbitration panel who shall hear all claims shall consist of five members one of whom shall be chosen by plaintiff Hideca, one chosen by defendant Nereus, one chosen by defendant Cepsa, and those three chosen shall choose the remaining two arbitrators, and it is further

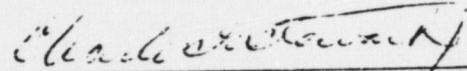
ORDERED, that a copy of this order be served upon

A 222

*Memorandum-Opinion of Stewart, D.J.*

the arbitrators appointed in the arbitration previously pending between plaintiff and defendant Nereus, and those appointed in the arbitration previously pending between defendants Nereus and Cepsa.

SO ORDERED.

  
\_\_\_\_\_  
United States District Judge

Dated: New York, N.Y.  
March 21, 1975.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

HIDROCARBUROS Y DERIVADOS, C.A.,

Plaintiff,

- against -

NOTICE OF APPEAL

75 Civ. 463 (CES)

NEREUS SHIPPING, S.A., and  
COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Defendants

- - - - -X

Notice is hereby given that NEREUS SHIPPING, S.A., defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum, Decision and Order of the Honorable Charles E. Stewart, Jr., dated March 20, 1975, directing NEREUS SHIPPING, S.A., to arbitrate with HIDROCARBUROS Y DERIVADOS, C.A., and COMPANIA ESPANOLA DE PETROLEOS, S.A., in a consolidated arbitration before five (5) arbitrators, despite the fact that the separate arbitration agreements between NEREUS SHIPPING, S.A., and HIDROCARBUROS Y DERIVADOS, C.A., and between NEREUS SHIPPING, S.A., and COMPANIA ESPANOLA DE PETROLEOS, S.A., each provided for arbitration before a panel of three (3) arbitrators, and in effect dismissing the panel of three (3) arbitrators previously appointed in the

A 224

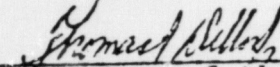
*Notice of Appeal*

arbitration between NEREUS SHIPPING, S.A., and COMPANIA ESPANOLA  
DE PETROLEOS, S.A.

Dated: March 25, 1975

BURKE & PARSONS

By:



A Member of the Firm

Attorneys for Nereus Shipping, S.A.  
52 Wall Street  
New York, New York 10005  
(212) 344-1030

**Docket No. 75-7207**

**In the Matter of the Arbitration**

*between*

**HIDROCARBUROS y DERIVADOS, C.A.,**  
*Petitioner-Appellee,*

*against*

**NEREUS SHIPPING, S.A.,**  
*Respondent-Appellant.*



A 225

## DOCKET ENTRIES

75 Civ. 0464 HIDROCARBUROS Y DERIVADOS VS NEREUS SHIPPING SA STEWART, J.

DATE	NR.	PROCEEDINGS
01-30-75		Filed application for appointment of arbitrator. Summons issued.
02-13-75		Filed notice of motion for an order appointing a 3rd-arbitrator pursuant to act 9 (s5). ret. on 2-19-75
02-13-75		Filed affdvt. of service by David A. Robinson of above motion and supporting papers. also served application for appointment of arbitrator- served Stephen P. Kynn for the Respondent Nereus Shipping. S.A.
02-19-75		Filed respondent's affdvt in reply to petitioner's affdvt.
03-21-75		Filed Petitioner's REPLY affdvt. in support of motion for appointment of arbitrator
03-21-75		Filed memorandum of law in support of application for appointment of arbitrator by the petitioner.
03-21-75		Filed pltf. affdvt. to respond to certain statements made by T. A. Dillion, Jr. a respondent herein with respect to motion by Hideca for an order staying.
z		(filed 75CIV.463)
03-26-75		Filed notice of appeal to the USCA for the Second Circuit from Memo. decision of 3-20-75 by Respondent Nereus Shipping, S.A. Mailed copie to Donovan, Donovan, Maloof & Walsh. Baker & McKenzie Poles, Tublin, Patestides & Stratakis.
04-8-75		Filed notice of proceeding has been certified and transmitted to the USCA for the Second Circuit on 4-8-75

-----X  
:  
In the Matter of the Arbitration between  
:  
HIDROCARBUROS Y DERIVADOS, C.A.,  
:  
Petitioner,  
:  
:  
and  
:  
NEREUS SHIPPING, S.A.,  
:  
Respondent.  
:

75 Civ. 464 (C.E.S.)

NOTICE OF MOTION FOR  
APPOINTMENT OF  
ARBITRATOR PURSUANT  
TO 9 USC §5

PLEASE TAKE NOTICE that upon the annexed Application for Appointment of Arbitrator, affidavit of Janna H. J. Bellwin and Memorandum of Law the undersigned will move this Court before the Honorable Charles E. Stewart, Jr. at Room 2602 of the United States Courthouse, Foley Square, New York, N.Y. on the 19th day of February 1975, at 9:45 A.M. or as soon thereafter as counsel can be heard for an order appointing a third arbitrator in the above-named arbitration pursuant to the United States Arbitration Act, 9 USC §5, on the ground that there has been a lapse in the naming of such arbitrator and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that answering affidavits or memoranda, if any, shall be served and filed at least three

A 227

*Notice of Motion for Appointment of Arbitrator  
Pursuant to 9 USC §5*

days prior to the return date of this motion.

Dated: New York, New York  
February 7, 1975

Yours, etc.

BAKER & MCKENZIE

BY: *Anna H. D. Bellin*  
Attorneys for Petitioner  
975 Park Avenue  
New York, New York 10022  
(212) 751-5700

TO: BURKE & PARSONS  
Attorneys for Respondent  
52 Wall Street  
New York, New York 10005

## APPLICATION FOR APPOINTMENT OF ARBITRATOR

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
	:	
In the matter of the Arbitration between	:	
	:	
HIDROCARBUROS Y DERIVADOS, C.A.,	:	
	:	75 Civ. 464 (C.E.S.)
Petitioner,	:	
	:	
and	:	
	:	
NEREUS SHIPPING, S.A.,	:	APPLICATION FOR
	:	APPOINTMENT OF
Respondent.	:	<u>ARBITRATOR</u>
-----X	:	

The application of HIDROCARBUROS Y DERIVADOS, C.A.  
respectfully shows:

1. This application for the appointment of an arbitrator is made pursuant to §5 of the United States Arbitration Act, 9 U.S.C. §1 et seq.

2. The jurisdiction of this Court is based upon provisions of the United States Arbitration Act, 9 USC §1 et seq. and the admiralty and maritime jurisdiction of this Court. This is an admiralty or maritime claim within the meaning of Rule 9(h) as hereinafter more fully appears.

3. The Petitioner, HIDROCARBUROS Y DERIVADOS, C.A., at all times hereinafter mentioned was and still is a corporation organized and existing under the laws of Venezuela, with an office at Av. Feo. de Miranda, Centro Plaza, Caracas, Venezuela

4. The Respondent, NEREUS SHIPPING, S.A., at all times hereinafter mentioned was and still is a corporation organized

*Application for Appointment of Arbitrator*

and existing under the laws of Liberia, with its principal place of business at 35-39 Akti Miaouli, Piraeus, Greece, and an office and place of business at 1041 Third Avenue, New York City, New York, care of Triton Shipping, Inc.

5. Petitioner and Respondent entered into a contract of affreightment dated January 27, 1971, New York, New York which provides for the transportation of crude oil and/or dirty petroleum products from the Persian Gulf to Europe, starting sometime between November 15, 1971 and January 15, 1972 and continuing for a period of three years.

6. The contract of affreightment contains the following clause relating to arbitration:

"24. ARBITRATION. Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of the Charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator has been appointed

*Application for Appointment of Arbitrator*

by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either arbitrator may apply to a Judge of any court of maritime jurisdiction in the city above-mentioned for the appointment of a third arbitrator, and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees, and judgement may be entered upon any award made hereunder in any Court having jurisdiction in the premises."

7. The parties, in Part I of the contract of affreightment, chose New York as the place of arbitration.

8. Controversies having arisen between Petitioner and Respondent with reference to the contract herein referred to, Petitioner, on or about August 23, 1974, by its attorneys, Baker & McKenzie served a Notice of Arbitration on Respondent naming as one of the arbitrators Professor Andreas F. Lowenfeld of the New York University School of Law and setting forth its claims.

9. On September 9, 1974, Respondent, by a letter from its attorneys, Burke & Parsons, named Lloyd C. Nelson as its arbitrator and set forth its claims.

10. A third arbitrator has not yet been chosen by Professor Lowenfeld and Mr. Nelson in accordance with the terms

*Application for Appointment of Arbitrator*

of the contract. Consequently, there has been a lapse of some four months in the naming of such third arbitrator.

11. Petitioner, desirous that the arbitration proceed forthwith so that an essential advantage of arbitration, the prompt resolution of disputes, may be realized, makes this application pursuant to §5 of the United States Arbitration Act which reads in pertinent part:

" . . . if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; . . . "

WHEREFORE, Petitioner moves the Court for an order designating and appointing a third arbitrator, who shall act under the said agreement with the same force and effect as if he had been specifically named therein.

Respectfully submitted

BAKER & MCKENZIE

BY:

*Janua H. J. Ballin*  
(An Associate of the Firm)  
Attorneys for Petitioner  
375 Park Avenue  
New York, New York 10022  
(212) 751-5700

## ORDER DESIGNATING ARBITRATOR

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In the Matter of the Arbitration between	:	
	:	
HIDROCARBUROS Y DERIVADOS, C.A.,	:	75 Civ. (C.E.S.)
Petitioner,	:	
	:	
and	:	
	:	ORDER DESIGNATING
NEREUS SHIPPING, S.A.,	:	<u>ARBITRATOR</u>
	:	
Respondent.	:	
-----X	:	

An application having been duly made by HIDROCARBUROS Y DERIVADOS, C.A., the Petitioner, for an order appointing an arbitrator pursuant to a contract to arbitrate between the parties hereto, and the Court having considered affidavits in support of and in opposition to the motion, and having heard the argument of counsel, and it appearing to the Court that there has been a lapse in the appointment of an arbitrator provided for in the said contract because the arbitrators selected by each party have been unable to agree upon a third arbitrator, it is

ORDERED, that the application of the petitioner herein be and the same hereby is granted and that be, and he hereby is, designated and appointed an arbitrator; and that the said shall act under the said contract to arbitrate between the parties herein with the same

A 233

*Order Designating Arbitrator*

force and effect as if he had been designated by the said arbitrators heretofore nominated by the parties hereto.

Dated: New York, New York  
      , 1975

---

United States District Judge

AFFIDAVIT OF JANNA H. J. BELLWIN IN SUPPORT OF MOTION  
FOR APPOINTMENT OF ARBITRATOR 9 USC §5

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
In the Matter of the Arbitration between  
:  
HIDROCARBUROS Y DERIVADOS, C.A.,  
:  
Petitioner, 75 Civ. (C.E.S.)  
:  
and  
:  
NEREUS SHIPPING, S.A., AFFIDAVIT  
:  
Respondent.  
:  
-----X

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK)

JANNA H. J. BELLWIN, being duly sworn deposes and says:

1. I am a member of the Bar of the State of New York and of this Court and an associate with the firm of Baker & McKenzie, counsel for petitioner Hidrocarburos y Derivados, C.A. ("Hideca") and I make this affidavit in support of petitioner's application for the appointment of a third arbitrator pursuant to the United States Arbitration Act, 9 U.S.C. §5.

2. Petitioner and respondent Nereus Shipping, S.A. ("Nereus") entered into a contract of affreightment dated January 27, 1971 which provided for the chartering of oil tankers by Hideca from Nereus to carry a total of approximately 600,000 tons of crude oil per year for three years. A copy of that contract of affreightment is annexed as Exhibit A hereto.

3. During the course of the contract of affreightment disputes arose between Hideca and Nereus regarding certain actions taken by both parties and the interpretation of certain contract terms and procedures.

4. On August 23, 1974 Hideca by its attorneys, Baker & McKenzie, served a Notice of Arbitration pursuant to Clause 24 of the contract of affreightment on Nereus naming as one of the arbitrators Professor Andreas F. Lowenfeld of New York University School of Law and setting forth its claims. A copy of that Notice of Arbitration is annexed as Exhibit B hereto.

5. On September 9, 1974 defendant Nereus by letter to Baker & McKenzie from its attorneys, Burke & Parsons, named Lloyd C. Nelson as an arbitrator and set forth its claims. A copy of that letter is annexed as Exhibit C hereto.

6. Since September 9, 1974 no third arbitrator has been chosen by Professor Lowenfeld and Mr. Nelson. I was informed by Professor Lowenfeld in late November that he and Mr. Nelson had agreed upon an arbitrator, Lawrence E. Walsh, former U.S. District Judge, but that Judge Walsh had declined.

7. More recently I asked Prof. Lowenfeld about the status of the third arbitrator and he indicated that several proposals had been made but none had been agreed upon. I was informed that Professor Lowenfeld has suggested Judge Stanley Fuld, Judge Samuel C. Coleman, Mr. Bayless Manning, Mr. Robert Hellawell, Mr. Francis T. P. Plimpton, Mr. Whitney North Seymour, Mr. Orisen S. Marden, Mr. John J. Barret, and Mr. Edward J. Ross,

as experienced attorneys in international and/or admiralty matters. I was further informed that Mr. Nelson suggested Mr. Donald L. Caldera, Mr. Harry Hunter, Mr. Hammond Cederholm, Mr. H. B. Smith, Mr. Ferdinand Sauer and Mr. Donald Zubrod who are commercial maritime people.

8. The United States Arbitration Act, 9 U.S.C. §5 provides in relevant part:

"If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein;" (emphasis supplied)

9. There is no indication if and when the two existing arbitrators will agree on a third member of the panel.

10. There has clearly been a lapse of almost five months in the appointment of the third arbitrator and the Court should now move to prevent any further delay in the proceeding. See Plaintiff's Memorandum of Law in Support of Application for Appointment of Arbitrator submitted herewith ("Plaintiff's Memorandum") pp.1-3.

11. The purpose of arbitration is the speedy resolution

of disputes and Hideca is being prejudiced by the delay in these proceedings.

12. As set forth in the Affidavit of Lawrence W. Newman dated January 17, 1975 and attached as Exhibit D hereto, Nereus desires to proceed more quickly against Hideca's guarantor, Compania de Petroleos, S.A. ("Cepsa") to the detriment of Hideca's rights to have its claims heard in the arbitration proceeding it has instituted.

13. The applicant is proceeding by Order to Show Cause rather than proceeding by motion because time would not permit the making of a motion of the required notice because the applicant is also simultaneously moving for a temporary restraining order and preliminary injunction enjoining the arbitration between Nereus and Cepsa from proceeding pending the outcome of the Hideca-Nereus arbitration. These actions are related and must be heard together in order for the Court to have a true understanding of the situation and relief claimed. See *Hidrocarburos y Derivados, C.A. v. Nereus Shipping, S.A. and Compania Espanola de Petroleos, S.A.* 75 Civ. \_\_\_\_\_ to be filed simultaneously.

14. Mr. David L. Maloof of Donovan, Donovan, Maloof & Walsh, co-counsel to Hideca gave notice of this order to show cause to Mr. Thomas Dillon of Burke & Parsons, attorneys for Nereus by telephone on January 30, 1975 as set forth in his affidavit submitted in *Hidrocarburos y Derivados, C.A. v. Nereus Shipping, S.A. and Compania Espanola de Petroleos, S.A.* 75 Civ. \_\_\_\_\_ to be filed simultaneously herewith. Although Cepsa is not

*Affidavit of Janna H. J. Bellwin*

named in this action, I gave notice by telephone on January 29, 1975 to Mr. Patrick V. Martin of Poles, Tublin, Patestides & Stratakis, attorneys for Cepsa. Messrs. Burke & Parsons and Messrs. Poles, Tublin, Patestides & Stratakis have consented to appear for argument on this motion for appointment by the Court of the third arbitrator.

15. No prior application for the relief sought herein has been made by or on behalf of the applicant to this or any other Court.

FOR THE FOREGOING REASONS, Hideca respectfully requests this Court to appoint the third arbitrator in the arbitration pending between Hideca and Nereus because of the lapse in time and to prevent any prejudice to Hideca or in the alternative to set a time limit for agreement on a third arbitrator by Professor Lowenfeld and Mr. Nelson.

*Janna H. J. Bellwin*  
 JANNA H. J. BELLWIN

Sworn to before me this  
 30th day of January, 1975.

*Goldie Potenberg*  
 Notary Public

GOLDIE POTENBERG  
 Notary Public, State of New York  
 No. 00111111  
 Qualified in 1971  
 Certificate Expires March 30, 1975

EXHIBIT A--CONTRACT OF AFFREIGHTMENT ANNEXED TO  
AFFIDAVIT OF JANNA H. J. BELLWIN

Identical to Exhibit 1 annexed to Affidavit of Thomas  
A. Dillon, Jr. printed herein at pages A48 to A54.

EXHIBIT B--NOTICE OF ARBITRATION (HIDECA TO NEREUS)  
ANNEXED TO AFFIDAVIT OF JANNA H. J. BELLWIN

Identical to Exhibit C annexed to Affidavit of Patrick  
V. Martin printed herein at pages A17 to A18.

EXHIBIT C--LETTER DATED SEPTEMBER 9, 1974 ANNEXED  
TO AFFIDAVIT OF JANNA H. J. BELLWIN

Identical to Exhibit D annexed to Affidavit of Patrick  
V. Martin printed herein at page A19.

EXHIBIT D--AFFIDAVIT OF LAWRENCE W. NEWMAN ANNEXED  
TO AFFIDAVIT OF JANNA H. J. BELLWIN

Identical to Affidavit of Lawrence W. Newman printed  
herein at pages A128 to A129.

AFFIDAVIT OF THOMAS A. DILLON, JR. IN REPLY TO MOTION  
FOR APPOINTMENT OF ARBITRATOR 9 USC §5

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

In the Matter of the Arbitration  
between HIDROCARBUROS Y DERIVADOS, C.A.,

75 Civ. 464 (CES)

Petitioner,

and

NEREUS SHIPPING, S.A.,

Respondent.

RESPONDENT'S  
AFFIDAVIT IN  
REPLY TO  
PETITIONER'S  
AFFIDAVIT

----- x

THOMAS A. DILLON, JR., being duly sworn, deposes and  
says:

1. I am an attorney duly admitted to practice before  
this Honorable Court and a member of the firm of Burke & Parsons,  
attorneys for the Respondent NEREUS SHIPPING, S.A. (hereinafter  
sometimes referred to as "Nereus") and am familiar with all  
proceedings heretofore had herein.

2. This affidavit is submitted in reply to the motion  
of Petitioner (hereinafter sometimes referred to as "Hideca")  
dated February 7, 1975, for the appointment of a third arbitrator  
with respect to arbitration proceedings between Petitioner  
and Nereus pursuant to the arbitration clause of a Contract of  
Affreightment dated January 27, 1971 (hereinafter referred to as  
the "Charter").

3. The Charter, a true copy of which is annexed as

Exhibit A to Petitioner's Affidavit, provided for the carriage between ports specified therein of a total of 1,800,000 long tons of cargo, 10% more or less at Owner's (i.e., Nereus') option over a three (3) year period commencing between November 15, 1971 and January 15, 1972. Typewritten clause 1 of the Charter provided as follows:

"This Contract of Affreightment will remain in full force and effect for a total quantity of 600,000 long tons ten (10) percent more or less per year at Owner's option fairly evenly spread for a period of three (3) years."

4. The three year period of the Charter commenced on December 24, 1971, when the first Vessel tendered to load the first cargo under the Charter. The total quantity carried under the Charter was 1,330,030 long tons, and the quantity carried up to July 12, 1974 in the last year of the Charter, was 209,751 long tons. No further cargo was shipped by the Charterer under the Charter.

5. So long as the freight rate of the Charter, which was Worldscale 130, was less than the prevailing market freight rate, Hideca, for a period of approximately two years, performed its obligations under the Charter. During said period, 12 voyages were performed and Hideca promptly paid freight, demurrage and expenses as required by the Charter terms. However, after the Arab Oil Embargo on October 20, 1973, the market freight rates began to decline until by June and July 1974 the market freight rate was approximately Worldscale 40.

*Affidavit of Thomas A. Dillon, Jr.*

6. The Charter provided for the performance by Hideca of the following:

(i) Shipment of up to 660,000 tons of cargo at a freight rate of Worldscale 130 between December 24, 1973 and December 24, 1974 (Special Clause 1).

(ii) Payment of freight "without discount upon delivery of cargo at destination" (Part II, clause 2).

(iii) Payment of demurrage "per running hour and pro-rata for a part thereof" (Part II, clause 8 and Special Clause 6).

(iv) Payment of "any increase in War Risk premiums" (Special Clause 5).

7. As indicated by the affidavits of Mr. Demetrios Xistris, President of Triton Shipping, Inc., a New York corporation which acted as agent for Nereus dated July 26, 1974 and November 25, 1974, annexed hereto and made a part hereof as Exhibits 1 and 2, respectively, Hideca failed to pay (i) increased War Risk Insurance Premiums in the amount of \$15,000.00 and demurrage of \$68,529.18 for voyage 14, which was completed on February 21, 1974; (ii) deviation expenses and demurrage of \$173,387.73 for voyage 15, which was completed on March 16, 1974; and (iii) demurrage in the amount of \$143,797.20 for voyage 16, which was completed on April 10, 1973. Nereus demanded payment of these sums from Hideca and, although Nereus received assurances that the sums would be paid, Hideca has failed to pay them to date.

8. When the 17th voyage was completed on July 12, 1974 with the delivery of 64,164 long tons of oil at Mohammedia, Morocco, Hideca defaulted in the payment of freight in the amount of \$170,424.17 and demurrage in the amount of \$61,432.29, which sums have never been paid by Hideca.

9. After the fundamental breach of the Charter by Hideca in failing to pay freight for voyage 17, Hideca indicated that it would pay a sum into an escrow account to be opened in the joint names of "Burke & Parsons and Baker & McKenzie as Escrow Agents", attorneys for Nereus and Hideca, respectively. Such account was opened in the First National City Bank, but Hideca defaulted in its undertaking to make the payment. Annexed hereto and made a part hereof as Exhibit 3 is a copy of the Bank's statement for the joint escrow account showing a \$0000 balance.

10. On July 26, 1974, Nereus commenced an action against Hideca in this Honorable Court, 74 Civ. 3235, and obtained an order of attachment of the property of Hideca. The action was commenced pursuant to Section 8 of the Federal Arbitration Act, 9 U.S.C. §8, to obtain security by attachment for claims it had which were arbitrable with Hideca. However, no assets of Hideca have been located in this country.

11. On August 14, 1974, Nereus delivered by hand to the chartering broker, Long, Quinn & McAleer, a letter demanding arbitration with Hideca stating, in part, as follows:

"In accordance with the terms of the COA

Nereus hereby demands arbitration and nominates Mr. Lloyd C. Nelson, Orion & Global Chartering, Inc., 29 Broadway, New York, New York, as an arbitrator. Please promptly advise us of the name of the arbitrator appointed by you so that the two so chosen may select the third arbitrator."

The text of Nereus' letter demanding arbitration was sent by telex by the brokers to Hideca on August 14, 1974 and Hideca on the telex acknowledged receipt.

12. Hideca did not reply to Nereus' demand and nomination of an arbitrator. However, on August 23, 1974, Messrs. Baker & McKenzie, as attorneys for Hideca, served a notice of arbitration on attorneys for Nereus, a copy of which is annexed to Petitioner's Affidavit as Exhibit B.

13. The issues to be decided in arbitration based upon Nereus' claims are the validity and amount of Nereus' claims for (i) unpaid freight on the 17th voyage, (ii) calculation of demurrage for voyages 14 through 17, (iii) extra War Risk Premiums, and (iv) damages by reason of Hideca's wrongful rejection of the Vessel tendered for the 18th voyage thereby ceasing Hideca's performance of the Charter. Each of these issues is within the normal category of commercial shipping disputes under charter parties, which are arbitrated every day in New York by members of the Society of Maritime Arbitrators. A copy of the Rules and of the Roster of the Society of Maritime Arbitrators are annexed hereto as Exhibit 4.

14. The notice of arbitration sent by Hideca's attorney (Exhibit B to Petitioner's Affidavit), specified four

disputes to be arbitrated as claims by Hideca. These disputes are quoted herein together with your deponent's comments concerning them.

(a) "Nereus committed a breach of the entire charter party."

Since the freight market rate as shown by the affidavits of Mr. Xistris was Worldscale 40 as opposed to the Charter freight rate of Worldscale 130, there would be no reason for Nereus to decline performance and even if it did so, which is denied, Hideca would have suffered no damages. In any event, this dispute is a common dispute under charter parties of the kind routinely arbitrated by members of the Society of Maritime Arbitrators.

(b) "Nereus improperly withheld from Hideca a vessel which Nereus had nominated and Hideca had accepted."

The same comments made with respect to claim (a) apply to this claim.

(c) "Nereus improperly and wrongfully obtained a Court order purporting to attach certain assets of Hideca."

The attachment order of this Honorable Court dated July 26, 1974 was intended to obtain security under Section 8 of the Federal Arbitration Act, 9 U.S.C. §8. No property was attached because none could be found and certainly Hideca would have no basis to recover damages.

(d) "Nereus improperly and wrongfully invoked the guarantee under the charter party by Compania Espanola de Petroleos, S.A."

Since the so-called guarantee was Addendum No. 2 to the Charter and there is a separate arbitration pending with Cepsa, this alleged dispute appears specious. However, arbitrators from the Society of Maritime Arbitrators would

be fully competent to evaluate Hideca's claim and award damages, if they found it meritorious.

15. The arbitration clause of the Charter does not specify that the arbitrators are to be attorneys, which is customary if the parties intended the arbitration to be other than a customary commercial maritime arbitration. Petitioner, on August 23, 1974, nominated as its arbitrator Andreas F. Lowenfeld, Esq., Professor of International Law at New York University Law School, after Nereus had appointed Mr. Lloyd C. Nelson, a member of the Society of Maritime Arbitrators, who is not a lawyer but is a shipping executive fully conversant with charter party disputes.

16. Your deponent, following Petitioner's motion, was advised by Mr. Nelson that on September 30, 1974 Mr. Nelson suggested as the third arbitrator three gentlemen who were familiar with shipping and with charter party disputes, including Joseph C. Sweeney, Esq., Professor of Admiralty Law at Fordham University Law School. At no time prior to February 13, 1975 (which was 6 days after Petitioner filed its motion herein), did Professor Lowenfeld indicate that Professor Sweeney would not be acceptable to him as the third arbitrator. Mr. Nelson indicated that Professor Lowenfeld informed him on February 13, 1975 that Professor Sweeney was not acceptable because Raymond J. Burke, Jr. had attended Fordham Law School. Mr. Burke, Jr. is not handling this case, but did in the absence of your deponent, speak to Mr. Lawrence W. Newman, attorney for Petitioner, during July 1974.

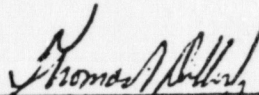
17. Annexed hereto as Exhibit 5 are copies of three letters dated respectively January 16, 22 and 29, 1975 exchanged between the two arbitrators, which were furnished to your deponent at his request by Mr. Nelson. The letter of Professor Lowenfeld dated January 22, 1974 states, in part, as follows:

"Frankly, I believe that the members of the Society of Maritime Arbitrators who you proposed in your last letter do not, (so far as I can judge without knowing any of them personally) quite fill the bill. From what I understand of the dispute that we have been asked to arbitrate, it goes well beyond the typical factual dispute concerning a charter party. Indeed, if it had been that kind of dispute, I would have been an inappropriate nominee myself. My understanding is that the dispute involves not only a complicated set of facts but also questions of conflict of laws, possible interpretation of foreign law, the effect of unforeseen circumstances, and the like. While I have no doubt that you can handle these problems, my judgment is that the panel would be more successful if the chairman were an experienced lawyer or judge."

18. It is clear that Professor Lowenfeld is operating under a mistaken notion of the disputes involved in the arbitration. As indicated herein, the disputes are under the Charter, which is a maritime contract providing for arbitration in New York. The Charter is on a customary commercial form known as the Essovoy 1969 form and the disputes involve claims for (i) extra War Risk Insurance Premiums, (ii) demurrage, (iii) unpaid freight, and (iv) damages based on the difference between the Worldscale rate of 130 stipulated in the Charter and the market rate (whether the arbitrators find that Hideca breached

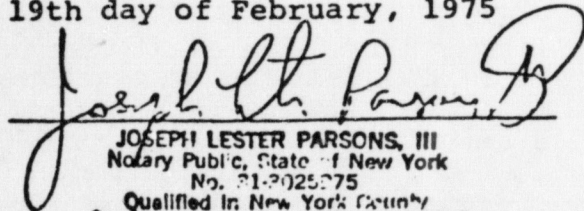
the Charter or that Nereus breached it or did not tender a Vessel as alleged by Hideca).

19. The distinguished attorneys referred to in paragraph 7 of Petitioner's Affidavit are outside the field of shipping, commercial charter party disputes, and maritime practice. Your deponent is agreeable to Petitioner's alternative request contained in the last paragraph of its affidavit that the Court "set a time limit for agreement on a third arbitrator by Professor Lowenfeld and Mr. Nelson" but also requests that the Court instruct the arbitrators that the third arbitrator should be conversant with shipping and charter party disputes.



Thomas A. Dillon, Jr.

Sworn to before me this  
19th day of February, 1975



JOSEPH LESTER PARSONS, III  
Notary Public, State of New York  
No. 81-2025075  
Qualified in New York County  
Commission Expires March 30, 1975

A 219

EXHIBIT 1--AFFIDAVIT OF DEMETRIOS XISTRIS DATED  
JULY 26, 1974 ANNEXED TO AFFIDAVIT  
OF THOMAS A. DILLON, JR.

Identical to Affidavit of Demetrios Xistris (portion  
of Exhibit 3) annexed to Affidavit of Thomas A. Dillon,  
Jr. printed herein at pages A58 to A61.

EXHIBIT 2--AFFIDAVIT OF DEMETRIOS XISTRIS DATED  
NOVEMBER 25, 1974 ANNEXED TO AFFIDAVIT  
OF THOMAS A. DILLON, JR.

Identical to Exhibit 4 annexed to Affidavit of Thomas  
A. Dillon, Jr. printed herein at pages A67 to A69.

EXHIBIT 3--BANK STATEMENT FOR JOINT ESCROW ACCOUNT  
ANNEXED TO AFFIDAVIT OF THOMAS A. DILLON, JR.

Identical to Exhibit 3 annexed to Affidavit of Thomas  
A. Dillon, Jr. printed herein at page A142.

EXHIBIT 4--RULES AND ROSTER OF THE SOCIETY OF  
MARITIME ARBITRATORS ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

**SOCIETY OF  
MARITIME  
ARBITRATORS, INC.**

**JUNE 1974**

**ROSTER OF MEMBERS**

**17 BATTERY PLACE**

**NEW YORK 4, N.Y.**

**TELEPHONE: HA 2-2786**

**Society of Maritime  
Arbitrators, Inc.**

**OFFICERS & DIRECTORS  
1974-75**

President ..... Donald E. Zubrod  
Vice-President ..... Jack Berg  
Secretary ..... Jones F. Devlin  
Treasurer ..... John M. Reynolds

**Directors**

Manfred W. Arnold	John M. Reynolds
Hammond L. Cedarholm	Ferdinand E. Sauer
Charles F. Nisi	George T. Stam
Edmund H. Orton	George E. Stam
Stephen J. Stapleton	Max J.R. Wolfson

**Past Presidents**

1963-1965 John M. Reynolds

1966-1967 Eric A. Skoglund

1968-1969 John P. Besman

1970-1971 Ferdinand E. Sauer

1972-1974 Michael A. Van Gelder

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

**ROSTER OF MEMBERS**  
(\*Indicates Associate Member)

**ADEMA, Cees**

Born 1940.

A broker with Skaarup Shipping Corp., Greenwich. Previously associated with Bunge Corporation, New York as broker and operations manager. In latter capacity supervised operations of many vessels on time charter and voyage. Familiar with all forms of chartering and operational problems.

Telephone: (203) 661-8333

**\*ANDREAE, Joseph**

Born 1913.

Currently retired after 33 years with Standard Oil of New Jersey and various affiliates. Had been Vice-President and Director of Esso Tankers Inc. in New York, and General Manager of Humble Oil & Refining Co. (Marine Division) in Houston. Familiar with all phases of tanker operations and chartering.

Telephone: (203) 354-0672

**ARNOLD, Manfred W.**

Born 1938.

Presently employed by Bank of North America in advisory capacity on shipping matters, ship finance and insurance adjustments. Previously 13 years with Fritzen-Schiffsagentur und Bereederung GMBH and their affiliates as Operations Manager in Germany, Japan and New York.

Telephone (212) 623-7348/49

**AUGENTI, Bruno J.**

Born 1904.

Chairman of the Board Marine Index Bureau, Inc. Graduate Royal Naval Academy, Leghorn, Italy. Master Mariner's Diploma and served as Merchant Marine Officer. For over 30 years retained as consultant and surveyor on all types of marine claims involving shipowners, charterers, stevedores, etc.

Telephone: (212) 269-1200

**AXIOTES, George N.**

Born 1912

Holds unlimited American Masters License. Has held executive shore positions in Steamship and Stevedoring firms.

Since 1950 operates as Marine Surveyor and Consultant including surveys of cargo, stowage, hull surveys, condition surveys and pier surveys.

Address: 129 North Arlington Ave., East Orange, New Jersey

Telephone: (212) BO 9-7968 or (201) OR 4-3072

**BEAUDET, Edward C.**

Born 1915.

Vice President American Union Transport, Inc. Served in their chartering department since 1946, previously with Isbrandtsen-Moller SS Co. Thoroughly experienced in all phases of dry cargo chartering, as well as general operations.

Telephone: 725-1200

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

**BERG, Jack**

Born 1927.  
Graduate of U.S. Merchant Marine Academy 1949 and  
N.Y.U. School of Law 1958. Sailed as Deck Officer  
American Export Lines and Officer U.S.N. (M.S.T.S.)  
Associated with Continental Grain Co. for past 19 years  
and intimately involved with all forms of Charter Party  
disputes.  
Telephone: (212) 952-8643

**BESMAN, John P.**

Born 1926.  
President of Sagus Marine Corp., Chief Exec. L. Dreyfus of  
London Organization and affiliates for over 20 years;  
includes service in Genoa, London and Montreal;  
negotiated vessels on the Baltic Exchange  
Wide experience in chartering and most other branches  
of general steamship business.  
Telephone: (212) WH 3-1515 or London 628-9600

**\*BILTON, Paul M.**

Born 1911.  
Presently with A. Johnson & Co.  
Experienced in all phases of Tanker Chartering and  
negotiation, having served with Paragon Oil Company,  
National Bulk Carriers, Burma Oil, and Worldscale.  
Present Address: 70 Pine Street  
Telephone: (212) 344-7300

**BOISSEVAIN, Robert F.**

Born 1920.  
Vice President of Chartering Incorporated. Formerly with  
United States Navigation Co., Inc., Conaty Marine  
Chartering and Interoceanic Commodities Corp.  
Over 25 years experience in the Steamship industry  
covering mainly all phases of Operations and all types of  
chartering transactions.  
Telephone: (212) BO 9-1940

**BORCH, Peter**

Born 1921.  
Chartering Mgr. Caemi International, Inc. Formerly Vice-  
President Blidberg Rothchild Agency Corp. After war  
service entered vessel operations, subsequently went into  
chartering and has been a broker ever since. Over 25  
years experience in all phases of Ocean, Transportation.  
Thoroughly familiar with all forms of charters and  
complications, arising therefrom.  
Telephone: (212) 697-9555.

**BOULALAS, Angelos**

Born 1932.  
President of Boulalas Associates, Marine Surveyors and  
Casualty Investigators. Master Mariner with 17 years  
seagoing experience. Formerly with Lamorte, Burns & Co.  
adjusting cases of Average and charter party disputes.  
Thoroughly familiar with all phases of operations,  
technical matters, maritime casualties, charter party  
disputes, etc.  
Telephone: (212) 944-5590.

*Exhibit 4 Annex to Affidavit of Thomas A. Dillon, Jr.*

**BRENNAN, Martin L.**

Born 1913.  
Retired from Creole Petroleum Corp. in 1972 after 30 years of service with Jersey Standard and affiliates. Since 1956 was Creole New York's Marine Advisor. Prior to that spent 10 years with Lago-Aruba. Experienced in all phases of tanker operations, chartering, contamination claims, demurrage and tanker transportation contracts.  
Address: 21 Hofstra Drive, Greenlawn, N.Y. 11740  
Telephone: (516) 427-8544.

**BROWER, Wilbur J.**

Born 1920.  
Chartering consultant. Engaged in shipping business since 1936, having been assistant Vice-President in charge of chartering of Seneca Coal & Iron Corp. and then President again at Gannet Freighting, Inc. from 1952-1968. Familiar with all phases of chartering business, with particular emphasis on phosphates and other fertilizers.  
Address: 560 Golf Links Lane, Long Boat Key-Sarasota, Florida.

**BREWER, W.C.**

President Brewer Shipping Co.  
Formerly President of American Coal Steamship Co.  
Formerly President of A.L. Burbank & Co. Over 40 years of experience in all phases of shipping.  
Telephone: (212) WH 4-7026.

**BUSCH, Stephen H.**

Born 1940.  
Graduate Maritime College, Fort Schuyler, New York. Served at sea in U.S. Dry Cargo Lines seven years, holds Master's license. One year law school, University Connecticut. For past five years involved with chartering and operations of chemical tankers and contract negotiations.  
Telephone: (203) 661-3800.

**BYRNE, James D.**

Born 1925.  
President Omnium Agencies, Inc., Associated with Omnium or their affiliates since 1951 as Operating Manager and Chartering Manager until appointment as Vice-President and Director in 1955 and President in 1973. Extensive experience in all phases dry cargo tramp shipping.  
Telephone: (212) WH 3-5939.

**CALDERA, Donald L.**

Born 1935.  
Vice President Qualpeco Services Inc., a transportation firm - motor carriers, leasing, and diversified consulting with emphasis on financial and administrative aspects of marine transportation. Formerly officer of Inter-Freight, division of American Export Industries, with container and break-bulk shipping, trucking, freight forwarding, terminals and equipment leasing. Line experience in berth line services, containerization, design, operation and financing of all types of vessels.  
Telephone: (212) 682-5550 Home (914) 591-8894

**CAMERON, Allen**

Born 1911.

President Buckfield Corp., formerly Vice President National Bulk Carriers 1958-1967, consultant to the Transportation Industry specializing in operating, financing valuation, feasibility analysis and related problems. Currently licensed Master, formerly licensed air navigation instructor. Wide experience afloat and ashore particularly in oil and bulk cargo trades.

Telephone: (212) 586-3140 or (203) 327-3143.

**CASEY, Edward P.**

Born 1928.

Vice President of Peabody and Lane, Inc., Boston. Associated since 1954 with major New York shipping interests in Operations, Chartering and Management. Previously sailed for 8 years in Military, Liner and Tramp Services. Extensive experience in handling time charter and voyage charter disputes on behalf of both owners and charterers.

Telephone: (617) 482-2550.

**CEDERHOLM, Hammond L.**

Born 1921.

Vice President operations James W. Elwell & Co., Inc., Owners and Operators of Tramp Vessels. Formerly for 13 years with Chilean Nitrate Sales Corp. as Manager of Chartering and Operations of Time Chartered Fleet. Over 30 years experience managing and operating for major time charter operators and fleet owned bulk carriers.

Telephone: (212) 432-0380.

**CHAO, James S.C.**

Born 1927.

President of Foremost Maritime Corporation, before that was General Manager of Chartering and Operations. Previously in charge of liner services for China Merchants Steam Navigation Corp. In shipping since 1949, over 10 years experience at sea and as Port Captain.

Telephone: (212) 943-2335.

**\*CHIARMONTE, Salvatore J.**

Born 1926.

General Manager and Traffic Logistic Manager Continental Grain Company. 25 years experience in foreign trade with intensive experience in voyage/time chartering, tankers (for vegoils and chemicals) dry cargo vessels (for meals), barges, liquid and dry bulk terminals, operations, documentation, etc.

Telephone: (212) 952-8656.

**\*COLYVAS, C.N.**

Born 1914.

Manager Charter Operations, with Maritime overseas Corp.

Formerly Operations Manager with Cosmos Shipping Corp., and from 1956 to 1968 Port Capt. & Operations Mgr. with Niarchos Corp. in N.Y., London, etc. Served at sea 1937 to 1956.

Telephone: (212) 867-3500 or Home (516) 883-8656.

**CRATTY, Richard**

Born 1932.  
With United International Shipping Corp., in Oakland, Calif.  
Formerly with States Marine Lines, American Clipper Line and Commodore Chartering Corp. Comprehensive experience in all phases of steamship management operations and chartering.  
Address: c/o Kaiser Aluminum Corp., Kaiser Center, Oakland, California.

**DAVIES, William D.**

Born 1897.  
Consultant; was arbitrator on chartering for Department of Justice, Admiralty Division.  
Experienced in chartering of dry cargo and in berth line movements. Insurance broker in New York State.  
Telephone: (203) TO 9-2590.

**DeBOUTHILLIER, Alain**

Born 1924.  
Associate of Francis A. Martin & Ottaway, Inc., ship surveyors, appraisers and marine consultants. Also Vice-President and Treasurer of Sumar Shipping, Inc., steamship agents and operators. After sea service, active in chartering and ship sales since 1951, formerly with Farrell Lines, Peninsula Navigation Corp. and later Vice-President and Manager of Marine Operations of Grace Line.  
Telephone: (212) DI 4-6486.

**DENBY, David E.**

Born 1921.  
Operations Manager E.J. Maher, Inc., 1963 to date. Familiar with current problems of Time Charters, operations and husbandry.  
Telephone: (212) WH 3-4360.

**DEVLIN, Jones F. Jr.**

Born 1899.  
Maritime Consultant since retirement from U.S. Lines Co. where he was Vice-President and General Manager of Operations for 18 years. Twenty-five years sea experience and Ship Master; also managing operator of stevedoring and terminal corps. Familiar with all phases of chartering.  
During World War II was Genl. Operating Mgr. for W.S.A. in London for Iceland, Russia & N.W. Europe 300 West 108th St., N.Y.C., AC-2-1590 or Box 91, Southampton, L.I. (516) AT 3-0077.

**DRAKAKIS, George**

Born 1921  
Vice President in charge of Chartering, Dry Cargo and Tanker Vessels for Admanthos Shipping Agency, Inc. Also extensive experience in operations, hull and machinery and P & I Insurance.  
Telephone: (212) 432-5162.

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

**EVANS, George H.**

Born 1908.  
Vice President R.J. Reynolds Industries. Formerly President South African Marine Corp. thence Vice Pres. States Marine Corp. Has completed 50 years in shipping business. Served 6 years in command at sea and in high level shore-side management since 1947.  
Telephone: (919) 748-2272 or (516) 766-5485.

**FARLEY, Philip W.**

Born 1920.  
Independent Investor. During WW II served with U.S. Army Transp. Corp. as Captain, performing cartography work. From 1946-1956 Vice Pres. American Hawaiian S.S. Co. in Chartering and Special Projects. 1956-1972 Vice Pres. Pacific Coast Transport Co. dealing in financial, Chartering and Special Projects.  
Telephone: (212) 355-6726.

**FERALDIS, Eugene**

Born 1900.  
Retired Captain, Greek Navy. For some years associated with A.L. Burbank & Co. Currently self-employed as maritime consultant. For past 30 years experienced in many phases of shipping in the U.S.  
Address: 357 East 75th N.Y. 22  
Telephone: 355-7140.

**FERRIS, Arthur E.**

Born 1910.  
Tanker Transportation Consultant to Amerada-Hess Corp.. Formerly president of Triton Shipping, Inc. Substantial part of life in shipping industry. During war with WSA, then Tanker Chartering Manager of Paragon Oil Co., prior merger with Texaco.  
Telephone: (516) 365-9830 (Manhasset)  
or (305) 588-0748 (Palm Beach)

**FINLAYSON, John L.**

Born 1928.  
Has been in the grain business since 1954. Recently with Cargill, Inc. as Executive Vice-President he organized and directed Cargill's chartering subsidiary. (Greenwich Marine, Inc.) which acts as chartering broker, manages ocean freight market positions and operates owned and time chartered vessels.  
Present Address: 131 Gayoso, Memphis, Tennessee

**FORTI, Alexander**

Born 1927.  
With Cirillo Bros. Petroleum, Inc. Previously with various marine subsidiaries of Bethlehem Steel Company. Thoroughly familiar with chartering and operation of tankers and dry cargo, as well as tugboat and barge operation.  
Telephone: (212) TA 4-5000

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.***FOSS, Torstein**

Born 1924.

With Woodward & Dickerson, Inc., Philadelphia, Manager Gypsum Div. and Chartering Mgr. In steamship business since 1945. Worked as dry cargo and tanker chartering broker. Acted as Operations Manager, Purchasing Agent and conducted ships repairs and insurance problems. Has been consultant for various companies for port development and raw materials transportation.

Telephone: (215) 564-5600.

**GEORGACOPOULOS, Elftherios or  
GEORGE, E.**

Born 1902.

Greek Navy (Regular) for 30 years. Retired as Rear Admiral. 1945-1947 Greek Naval Attache, London, also member of Greek Shipping Committee. From 1947 to date actively engaged in all phases of shipping and chartering for American and Foreign Flag Tramp ships and Tankers.

Telephone: Office (212) 344-6783; Home (201) 327-4912.

**GEORGES, Jerry**

Born 1924

Since 1956 with National Shipping and Trading Corp. as Secretary-Treasurer and Manager of Insurance and Claims Department - Wide experience in handling and settling all types of claims and disputes and corporate problems of shipping business - Experience in Public and Cost Accounting and active service at sea.

Telephone: (212) 582-3838.

**GINNA, John W.**

Born 1938.

Graduate of U.S. Merchant Marine Academy, Kings Point, N.Y. 1959. Served at sea as officer U.S.N. and in Merchant Marine. Employed by S. Livanos and since 1965 with Anglo Nordic Shipping (formerly Naess Shipping) as Asst. Vice Pres. handling both dry cargo and tanker chartering including LPG/LNG product carriers.

Telephone: (212) 582-1000.

**GRABFIELD, Phillip R.**

Born 1924.

Executive Vice-President Caeml International Inc. In shipping since 1948, formerly with W. H. Muller & Co. and United Fruit Co. Traffic Dept. Thoroughly experienced in brokerage and all phases of shipping.

Telephone: (212) 697-9555.

**GRODZICKI, Janusz**

Born 1914.

With A. Johnson Co., Inc., formerly Director Marine Transp. Dept. Agri. Chemicals Group of W.R. Grace & Co. Experience as master manager and charterer of dry cargo, tankers and L.P.G. ships. Associate of Inst. of Chartered Ship brokers, London.

Telephone: (212) 344-7300.

**GROS, Robert W.**

Born 1922.

President Spacebrokers, Inc. Has been in shipping since 1947, experienced in liner booking, operations (tanker, dry cargo and port), sale and purchase, and all forms of chartering.

Telephone: (212) 895-6470.

**HANNA, James**

Born 1899.

Since 1947 President Marine SS Co., Inc. Served at sea in Merchant Marine and U.S.N. (both World Wars) 1917-36, (from Cadet to Command). President of Ship Repair Co. with extensive experience both in dry cargo and tanker vessels to 1947. Has authored two books on "Tanker Operations" and "Roll-on-Roll-off and Containers." Telephone: (201) 451-1161 Mon-Wed-Fri. 9 a.m.-noon.

**HELBERG, Kaare**

Born 1913.

Since 1957 associated with Skaarup Chartering Corporation as a broker. Has been engaged in ship chartering and freight management since 1945, either with brokerage concerns, liner companies, or grain houses. Telephone: (212) DI 4-1323.

**HERLIHY, John L.**

Born 1925.

With Space Brokers, Inc. After Navy experience during the war and some stevedoring experience started in cable brokerage in 1952 and has been a broker ever since, first with F.W. Hartmann & Company, then Shipowners Agency, and several others. Thoroughly familiar with all phases of brokerage and charter parties of all kinds. Telephone: (212) 895-6470 or (516) 669-8900.

**HUKINS, Harold S.**

Born 1929.

Vice Pres. Bunge Corp. Has been in shipping and particularly the grain export business for 23 years. Familiar with export and import both in England and U.S.A. Is a Director of North America Export Grain Assn. and other related Management Associations. Telephone: (212) 543-6600.

**KLOSTY, Mack G.**

Born 1911.

Semi retired. Presently arbitrating and shipping consultant. In shipping since 1936. V.P. Bulk Carriers Corp. and T.J. Stevenson Co., Inc. Owned, operated U.S. and Foreign flag ships. Familiar Liner trade. Formed Mack Klosty & Co. 1949. Chartering Brokers specializing grain and other bulk commodities. Past Pres. Assn. Ship Brokers & Agents, Inc. Chairman N.Y. Produce Exchange Steamship Committee. Telephone: (212) 723-6076.

**LANDES, Leslie, N.**

Born 1922.

President Argonaut Shipping Corp. Shipowner. President Naess Shipping 1966-70. Marine executive with Caltex 1947-66. Experience in general ship management, tanker and bulk carrier questions. Telephone: 972-1138.

**LAPSLEY, Claud A.**

Born 1922.  
Marine Consultant and Chartering Broker. Pres. Lapsley, Associates, Inc. Extensive experience in operation of tramp vessels, liners and tanker; experience in terminal operations and stevedoring; experience in chartering for bulk, bagged and general dry cargo trade, tankers and liquid chemicals.  
Address: 744 N.E. 2nd. So. Miami 33132.

**LOEFFLER, Christian E.**

Born 1935.  
Vice Pres. Transammonia Inc. (Transportation) and in same capacities for Transnitro, Inc. Responsible for all marine transport which includes voyage and time charters, terminals, stevedoring, insurance etc. for movement worldwide of liquid and dry fertilizer chemicals. Formerly Export Mgr. with Duval Sales Corp., Houston. 18 years in shipping.  
Telephone: (212) 758-8822 or (201) 895-2219/2612.

**LYRITZIS, Nikolaos**

Born 1924.  
President of N. Lyritzis Marine, Inc. Has wide engineering experience at sea; also experienced in design work, plans, maintenance, repairs, etc. all types of vessels. Member of Institute of Naval Architects; has Masters degree in mechanical engineering.  
Telephone: (212) 425-6960.

**MACK-FORLIST, D.M.**

Born 1911.  
Consulting Engineer, recently retired as Asst. to V.P. and as Manager of Contracts Bethlehem Steel Ship building Division, Sparrows Point. With them 1931-71. Member many professional engineering societies recipient of awards from Norwegian and Italian Governments.  
Address: 187 Clinton Ave., Dobbs Ferry, N.Y.  
Telephone: (914) 693-1009.

**MANIS, John**

Born 1926.  
Secretary-Treasurer Dover Navigation Corp. (ex. Pacific SS Agency). Served for 11 years as Treasurer of Maritime Brokers; has attended many arbitrations involving all types of disputes both dry cargo vessels and tankers.  
Telephone: (516) 294-8660.

**MARSANO, William F.**

Born 1911.  
Currently heading Rami Corp. & Imars Shipping Corp. active in dry cargo chartering, management and operations. In Alliance Shipping Company Inc. Imports & Exports. In Marsano Ship Agency active in Agency field.  
Telephone: (212) 964-9245/6/7.

**MATKOVIC, Ivo**

Born 1914.  
Vice President, James W. Elwell and Co., Inc. Served 8 years at sea from cadet to master; has some 22 years experience in all phases of steamship management.  
Telephone: (212) 432-0380.

**MEASTER, Charles L.**

Born 1942.  
Vice President of John F. Dillon Inc. Previously served several shipping concerns. Experienced in both direct and cable brokerage, also operations.  
Telephone: (212) 994-2910 or (203) 661-3777.

**MOHLMAN, George A., Jr.**

Born 1912.  
President Western Shipping Co. in charge of Chartering and Operations.  
Has been in shipping industry since 1933 as supervisor of cargo operations; all phases, on Atlantic coast and South America served one year with the Maritime Commission; extensive experience in chartering bareboats, Liberties and all type vessels.  
Telephone: (212) 422-8233.

**NICHOLS, Alexis (Nicolacopoulos)**

Born 1933.  
A native of Greece has had over twenty years of experience in the marine transportation industry acquired both in the United Kingdom and the United States. Has held Management positions with shipowning companies and is presently so employed. Holds degrees from the Athens College, University of Edinburgh and is a Greek Navy Reservist.  
Telephone: (212) 425-3730.

**NISI, Charles F.**

Born 1918.  
Exec. Vice-President Sanko Kisen Corp. (U.S.A.), in shipping since 1937. Familiar with all phases of chartering and operations, ship owning and time chartering purchase and sales, administration.  
Telephone: (212) 747-9757.

**NOTTINGHAM, Milton G., Jr.**

Born 1921.  
Executive Vice President, Peralta Shipping Agency, Inc., Washington D.C. Over 25 years experience in various facets of marine transportation including vessel operations, port operations, and chartering. Served at sea in various grades. Primary occupation charterer's broker for the ocean transportation of agricultural surplus commodities on behalf of several foreign governments.  
Telephone: (202) 785-3400.

**\*O'RIORDAN, Michael J.**

Born 1933.  
Export Manager of Luria Brothers & Co., Inc. Employed by this company since 1957.  
Experienced in many phases of Marine Activities, primarily Dry Cargo Chartering, especially steel scrap and ores, voyage and time charters, operations, steel barge construction and operation, vessel construction, purchase and sale of vessels, scrapping of vessels, stevedoring operations and damage claims.  
Telephone: (212) 754-4160.

**ORTON, Edmund H.**

Born 1924.  
With American Union Transport, Inc., Charter Department, since 1947 and presently Vice-President. Experienced in all phases of dry cargo chartering, especially in ores, and concentrates, also experienced in charter party details, including demurrage and despatch.  
Telephone: (212) 725-1200.

**PARSONS, James L.**

Born 1929.  
President of James L. Parsons Inc., Upper Montclair, N.J., chartering brokers. Has had experience in various companies engaged in shipping in England, continent and the United States since 1952; experience in both voyage chartering and time chartering.  
Telephone: (212) 344-3560 (201) 622-5224.

**PASTOR, William H.**

Born 1915.  
Manager, Chartering Department, Barber Steamship Lines. Before that was Vice-President in charge of Chartering for Mediterranean Agencies. In shipping for many years, familiar with purchase and sale of ships, as well as all phases of chartering and operations.  
Telephone: (212) 944-1300.

**PATE, Fred E.**

Born 1907  
Presently Management Consultant for the Public Bulk Terminal of the port of New Orleans. Was for 22 years Vice-President and Operations Manager for the Navios Corp., and before that in Los Angeles and later the Gulf for Isthmian Steamship Company. Familiar with all facets of chartering and operations.  
New Orleans Centroport, Box 60046, New Orleans, La. 70160.  
Telephone: (504) 242-4771.

**PATERAKIS, George**

Born 1917  
Operations Manager of National Shipping & Trading Corp. Served eight years at sea. Served as Operations Manager of Triton Shipping, Inc., handling U.S. Flag and Foreign ships. Thoroughly familiar with all kinds of charter party disputes, cargo handling, grain fittings, cleaning and preparing tankers for grain loading. Also experienced in drydockings, repairs and damages.  
Telephone: (212) JU 2-3838 or (212) 932-5178.

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

**PATTON, William O., Jr.**

Born 1913  
Vice-President, Orion Global Chartering Inc. Formerly with A.T.I.C., New York, in charge of expediting, programming, dispatch and demurrage sections. Fixing tonnage on dry cargoes for 23 years.  
Telephone: (212) WH 3-7750

**PEREZ, Rogelio D.**

Born 1919  
Inspector for Sucrest Corp.  
Licensed shipmaster with considerable sea experience; also wide experience in sugar and molasses trades both in the United States and Cuba; has acted as shipping inspector for American Molasses Co. in United States, Santo Domingo, Mexico, Venezuela and Barbados; former lecturer on Maritime Traffic at the Merchant Marine School  
Telephone: (212) 833-8653

**PETITO, Anthony S.**

Born 1930  
In shipping since 1952. Started with Grace Line; thence Kerr Steamship Co., Inc. became Manager of Liner Services, Operations and Traffic; later became manager of Kerr Chartering division. Thence joined in partnership with charter brokering firm of Chiron International Corp. Presently with Retla Steamship Company as Regional Manager of Liner Services. Broadly experienced in all fields of International Steamshipping.  
Telephone: 765-4010.

**PHILIPPIDES, John G.**

Born 1917  
With Pacific Steamship Agency, Inc.  
Has been in shipping industry since 1937 in New York and in Africa. Familiar with arbitrations of charter party disputes and in other matters concerning maritime claims.  
Telephone: (212) BO 9-1230

**POWERS, Cyril F.**

Born 1901.  
Retired after 50 years in Shipping & Railroad transportation claims. Associated with Erie RR, A.G.W.I. Lines, American Export Lines and Western Tankers. Author of book on Bills of Lading 1966.  
Telephone: (516) FR9-5710.

**PREUSCH, Charles H.**

Born 1921.  
Operating Mgr. of Victory Carriers, Inc. owners/operators tankers & dry cargo vessels. Previously Asst. Operating Mgr. and Chartering Mgr. of Central American SS Agency. Eleven years at sea. Thirty-years experience in business. Thoroughly familiar with all aspects of contractual and technical aspects of charters, cargo problems, claims, navigation and repairs.  
Telephone: (212) 489-0100 Direct line: (212) 489-0891.

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

**REESE, Richard J.**

Born 1922

With Michael A. Karageorgis of New York Inc. Formerly manager Chartering Dept. of shipping subsidiary of Bethlehem Steel Corp., with them since 1955. With several other concerns before that so that he has been engaged in chartering since 1945 and is also thoroughly familiar with operational and husbanding duties.

Telephone: (212) 581-5555.

**REYNOLDS, John M.**

Born 1901.

President A.S.B.A. WORLDSCALE. In shipping since 1922, served in both traffic and operations of Munson SS Line, Sword SS Line, etc. Six years active duty World War II, now Commander USNR (Ret.). Familiar with arbitrations in all types maritime disputes. First President Society of Maritime Arbitrators, many years Secretary Assn. of Ship Brokers & Agents.

Telephone: (212) 422-2786.

**RING, John F. Jr.**

Born 1937.

Director Marine Transportation, Evans Products Company, responsible for all marine activities, including chartering vessel operations, terminalling, stevedoring, etc. Formerly associated with Bunge Corp., in chartering and operational capacities for ten years. Prior to that served at sea as officer on U.S. Merchant & Navy ships.

2333 No. Broadway, Santa Anna, Calif. 92706.

Telephone: (714) 835-1903.

**ROSS, Gerald J.**

Born 1931.

President Admiralty Agencies, Ltd. Graduate of U.S.M.M.A. (Kings Point) 1952. At sea eight years to Master. Since 1960 principal in firms engaged as Marine Consultants, Surveyors, also managing agents for grain discharge equipment; operations managing; grain and petroleum lightening.

Telephone: (212) 344-0060.

**\*ROTHSCHILD, Louis S.**

Born 1900.

Experienced in many aspects of transportation business. Former Chairman of Federal Maritime Board, Administrator U.S. Maritime Administration, Under Secretary of Commerce of Transportation etc. Holder Presidential Citation 1958. PhD Yale 1920.

1629 K. Street, N.W. Washington, D.C. 20006

Telephone: (202) 223-4333.

**ROUSSEL, Georges**

Born 1907.

Formerly Chief of U.S. office of A.T.I.C. (Association Technique de l'Importation Charbonniere) from 1945 to December 1971. In that capacity chartered and operated large fleets of vessels up to 200 vessels a month. Acted also as a general agent in the United States for vessels owned by the French bulk carrier group. Served at sea with the French Navy and the French Merchant Marine from 1925 to 1945.

Telephone: FI 8-2441.

**SANTINI, Basil A.**

Born 1940.  
Vice Pres. M.I.D. Ship Marine Inc. In shipping business since 1938. Presently handles all phases of Dry Cargo Chartering both time and voyage Charter Parties. Formerly with International Chartering Services 10 years. Served at sea and holds USNR commission as Lt. Commander.  
Telephone: (212) 952-1600.

**SAUER, Ferdinand E.**

Born 1920.  
Now with Lamorte Burns Co., Inc.  
Over 25 years of experience in the field of foreign trade with intensive experience in time and voyage chartering of vessels and cargoes, bulk terminal operations, export and import shipping and documentation, steamship conference negotiations.  
Telephone: (212) 432-0400.

**SCHILLING, Edward**

Born 1907.  
Retired from Lamorte, Burns and Co., Inc.  
Formerly with Alcoa Steamship Co. and Triton Shipping, Inc.  
Has had over 36 years of experience in the steamship industry in operations, chartering and terminal operations.  
Telephone: (201) 347-1186.

**SICILIANO, A.J.**

Born 1941.  
Marine Consultant, formerly President of Atlas Navigation Corp. and Vice Pres. American Bulk Carriers, Inc. Experienced in all phases of shipping contracts with special emphasis on general average, time charters and sale and purchase agreements.  
Telephone: (516) 724-5337.

**SIEBEL, Peter, Jr.**

Born 1920.  
At sea 1936-1945.  
Now President Beltic Marine Corp. In operations and engineering from 1945 through 1960, thence to present. Marine Consultant, Surveyor, operations, stevedoring, vessel repair, etc. Completely familiar with Liner berth services, tramp operation etc.  
Telephone: (212) 944-6406.

**SIMMS, Joseph**

Born 1928.  
With NAESS Shipping Co.  
Since 1948 has had wide experience in operations and chartering in both the tanker trade and dry cargo trade.  
Telephone: (212) 582-1000.

**SKOGLUND, Eric A.**

Born 1913.  
Vice President of Lambert & Skoglund Company, Inc., division of C.D. Mallory & Co., Inc. Dry cargo chartering and ship broker. In steamship industry since 1930, having been with Furness Withy & Co., Ltd. and Wessel, Duval & Co., Inc., general steamship operations; past President of Society of Maritime Arbitrators and of Assn. of Ship Brokers and Agents (USA) Inc., now Secretary of the Association.  
Telephone: (212) 344-8610.

**SLATTERY, Aelred Joseph**

Born 1905.  
Retired in 1964 from Esso International, Inc. after 40 yrs. service in Jersey Standard's Marine Department. Experienced in all phases tanker allocations, transportation studies, preparation and administration of bulk oil contracts, charters, demurrage and detention claims, incremental hires.  
Telephone: (516) BA 3-2426

**SMITH, Howell B.**

Born 1898.  
Associated with Smith & Johnson (Shipping) Inc. since 1924, handling all phases of shipping. Has been active in shipping since 1920; served with United States Navy in World War I and with War Shipping Administration, Department of State, during World War II.  
Telephone: (212) DI 4-4500.

**SOLETIC, Luke P.**

Born 1914.  
President Transcontinental SS Agency, Inc. handles chartering (both dry cargo and tankers) and Operations. Has extensive experience in all chartering and operational matters.  
Telephone: (212) 986-2861.

**STAM, George T.**

Born 1910.  
With Bunge Corp. Was associated with Universal Maritime Agencies for 20 years as Vice President in charge of engineering and operations. Handled charter party disputes since 1958.  
Was officer in the Hellenic Navy until the end of the war; sailed as Master of both dry cargo and tanker vessels.  
Telephone: (212) 943-6600.

**STANLEY, Thomas L., Jr.**

Born 1920.  
President of Thomas L. Stanley & Assoc., Inc. a firm of marine consultants, engineers, salvage surveyors, appraisers, and loss adjusters. Since 1940 has been associated with several of the Todd Shipyard Divisions and Wessel, Duval & Co., as well as the family firm. Fully conversant with all types of physical damage, surveys, repair and salvage costs and charter parties.  
7738 Belfort Ave., Houston, Tex. 77017.

**STAPLETON, Stephen J.**

Born 1933.  
Currently in Chartering Department of Gotaas Larsen, Inc. handling both tankers and dry cargo vessels. Over twenty years experience in the maritime field in Operations, Traffic and Chartering. Formerly with States Marine Lines, Sagus Marine Corp., and Union Bulk Chartering Services, Inc.  
Telephone: (212) 697-9710.

**STOCKMAN, Meyer**

Born 1897.  
Twelve years at sea as marine engineer. Over twenty-nine years inspector Steamboat Inspection Service and US Coast Guard. Retired November 1959 as Officer-in-Charge, Marine Inspection, N.Y. Zone. Marine surveyor and consultant since retirement from Coast Guard. International Law, Advanced International Law, Naval War College.  
Telephone: (212) ES 6-4403.

**STOVALL, Landis C.**

Born 1925.  
Formerly Vice-President of Continental Grain Company and affiliates in charge of its international freight and steamship activities.  
Sailed as deck officer. Joined Continental in 1947 and has experience in all areas of ocean freight and transportation from both the technical and commercial aspects of the business. Well versed in chartering matters.

**\*TSAGARIS, Theodore**

Born 1926.  
Pres. Constellation Maritime Agencies, Inc. Formerly V.P. Cargo Tankship Management Corp., and before that V.P. Global Navigation Co., Inc. Also was for 3 yrs. Engineer in charge of new buildings. Experienced all forms charters.  
Telephone: (212) HA 5-2666.

**VALENTINE, Albert C.**

Born 1899.  
Assistant to President Buckeye Steamship Company. Formerly Vice-President and Treasurer of Black Diamond Steamship Corp. Over forty years executive experience in dry cargo liner and tramp shipping with American and foreign flag vessels. Familiar with all aspects of the business.  
Telephone: 425-0535.

**VAN GELDER, Michael A.**

Born 1922.  
Actively in Ship and Cargo Chartering, operations, Time Charter & Owned fleet management since 1946 with Louis Dreyfus (Paris/London/New York), Titan Industrial Corp., N.Y., East West Chartering Corp., N.Y. Arbitrator since 1964. Board of Governors S.M.A., Inc. 1967/71 - President 1971/1974.  
Telephone: (212) 425-2993.

*Exhibit 4 Annexed to Affidavit of Thomas J. Dillon, Jr.*

**VISMANS, Pieter, L.M.**

Born 1927.  
President of Pittston Coal Export Corp., Started with a Steamship and Coal Importing concern in Rotterdam, Holland, in 1950. Came to New York, representing these interests in 1952.  
Wide experience in Steamship Operation and Dry Cargo Chartering.  
Telephone (212) 697-3838.

**WATSON, Albert L.**

Born 1905.  
President of A. L. Watson Co., Inc. and Watson Coal and Export Corp., N.Y.C. Director of the Coal Exporters Association of the United States and Chairman of their Committee on Transportation.  
Actively engaged in all phases of shipping and chartering as related to the exportation of coal for more than 20 years.  
Telephone: (212) DI 4-1150

**WEBBER, Harry G.**

Born 1904.  
Independent Consultant and also affiliated with F.A. Martin & Ottaway of N.Y.C. Retired in 1971 as Chief Representative in U.S. for Salvage Assn. of London after 35 years association. Prior to this service was at sea as Engineering Officer and Ship Construction in U.K.  
Telephone: (516) PL 6-3891 or (212) 344-6486.

**WILL, John M.**

Born 1899.  
U.S.N. Academy 1922.  
Admiral, U.S.N. (Ret) Presently a consultant. Retired President and Chairman of the Board of American Export Isbrandtsen Lines, after retiring from active Naval service, now a Director. In the later years of his Naval service he was Commander Military Sea Transport Service (MSTS) President and Chairman of the Board First Atomic Ship Transp. 1965-1971. M.E. Penn. State College.  
Telephone: 625-4200.

**\*WOLFF, Arthur L.**

Born 1915.  
Treasurer and Comptroller Trans-Ocean Steamship Agency, Inc., formerly Chief Accountant for other steamship companies including U.S. Maritime Commission, War Shipping Administration. Member of the Association of Water Transportation Accounting Officers.  
Experience since 1940 covers all phases of operations, financial and administrative functions for both dry cargo and tankers, American and foreign flag vessels.  
Telephone: (212) 425-0525.

**WOLFSON, Max J. Ramsden**

Marine consultant. Over 50 yrs. experience with U.S. and foreign SS companies in all areas of chartering and operations, both cargo and passenger, insurance claims, etc. Was 8 yrs. resident Mgr. in U.S. of Creaole Line, 15 years Mediterranean Director of Lykes Bros. SS Co. U.S. Government service in South America during World War II, then Chief of Trans. Division of FEA, Washington.  
Box 386, Pelham Manor, N.Y. 10803.  
Telephone: (914) 738-2572 or (212) 425-5611.

**YARRINGTON, Kenneth F.**

Born 1908.

Associated with Alken-Murray Corp. Has some 38 years of experience in chartering, purchase and sale, port agency and vessel operations, special emphasis on problems of oil and tankers. Combustion specialist boilers and Diesels. Former Chairman of the Tanker Committee of the Assn. of Ship Brokers and Agents, Inc.  
Telephone: (212) 777-6560.

**ZUBROD, Donald E.**

Born 1924.

Executive Vice-President Admanthos Shipping Agency, Inc. Has been in shipping since 1941. Experienced in operations, chartering, claims and engineering department. Has served as arbitrator in maritime disputes, as well as having prepared and presented cases for his company.  
Telephone: (212) 432-5150.

# MARITIME ARBITRATION RULES

SOCIETY OF  
MARITIME ARBITRATORS, INC.  
17 Battery Place

New York, N. Y. 10004

Telephone: (212) 422-2786/8

Revised July 1, 1974

## TABLE OF CONTENTS

### FEDERAL ARBITRATION ACT

#### Introduction-Act Governs Over Rules

Sec.	Page
1. Maritime transactions and commerce defined; exceptions to operation of title.....	1
2. Validity, irrevocability, and enforcement of agreements to arbitrate .....	1
3. Stay of proceedings where issue therein referable to arbitration .....	2
4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination .....	2
5. Appointment of arbitrators or umpire .....	3
6. Application heard as motion .....	3
7. Witnesses before arbitrators; fees; compelling attendance .....	3
8. Proceedings begun by libel in admiralty and seizure of vessel or property .....	4
9. Award of arbitrators; confirmation; jurisdiction; procedure .....	4
10. Same; vacation; ground; rehearing .....	5
11. Same; modification or correction; grounds; order .....	5
12. Notice of motions to vacate or modify; service; stay of proceedings .....	5
13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement .....	6
14. Contracts not affected .....	6

### MARITIME ARBITRATION RULES

#### I. Rules A Part Of The Arbitration Agreement

1. Agreement of parties .....	7
-------------------------------	---

#### II Tribunals

2. Name of tribunal .....	7
3. Panels of arbitrators .....	7
4. Office of tribunal .....	7

#### III. Initiation Of The Arbitration

5. Initiation under an arbitration provision in a contract .....	8
6. Initiation under a submission .....	8
7. Fixing of locality .....	8

#### IV. Appointment Of Arbitrator(s)

8. Disqualification .....	8
9. Disclosure by arbitrator(s) of disqualifying circumstance .....	8
10. Direct appointment by parties .....	9
11. Appointment under Act .....	9
12. Appointment of additional arbitrator by named arbitrators .....	9
13. Notice of appointment to arbitrator(s) .....	9
14. Vacancies .....	9

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

**TABLE OF CONTENTS**  
**MARITIME ARBITRATION RULES**  
(Continued)

**V. Procedure For Oral Hearing**

Sec.	Page
15. Time and place .....	10
16. Representation by counsel .....	10
17. Taking of a stenographic record .....	10
18. Interpreters .....	10
19. Attendance at hearings .....	10
20. Adjournments .....	10
21. Oaths .....	10
22. Majority decision .....	10
23. Order of proceedings .....	11
24. Arbitration in the absence of a party .....	11
25. Evidence .....	11
26. Evidence by affidavit and filing of documents ..	12
27. Inspection or investigation .....	12
28. Conservation of property .....	12
29. Closing of hearings .....	12
30. Reopening of hearings .....	12

**VI. Procedure For Other Than Oral Hearings**

31. Waiver of oral hearings .....	13
-----------------------------------	----

**VII. The Award**

32. Time .....	13
33. Form .....	14
34. Scope .....	14
35. Award upon settlement .....	14
36. Delivery of award to parties .....	14
37. Release of certified documents .....	14

**VIII. Special Provisions**

38. Waiver of rules .....	14
39. Time periods .....	14
40. Service of documents .....	14

**IX. Fees and Expenses**

41. Expenses .....	15
42. Arbitrator(s) fee .....	15
43. Deposits .....	15

**X. Interpretation And Application Of Rules**

44. Interpretation and application of rules .....	16
---	----

**APPENDIX A**

Submission .....	18
Subpoena .....	19
Award .....	20

**APPENDIX B**

Witness attendance fees .....	21
-------------------------------	----

**APPENDIX C**

Oaths .....	22
-------------	----

**MARITIME  
ARBITRATION  
RULES**

OF THE

**SOCIETY OF  
MARITIME ARBITRATORS, INC.**

17 Battery Place  
New York, N.Y. 10004

Adopted May 12, 1964  
Revised July 1, 1974

**INSTRUCTIONS FOR PROCEEDING  
UNDER THE RULES**

**Federal Arbitration Act Governs**

The United States Arbitration Act (9 USC §§ 1-14), hereinafter referred to as "the Act," provides procedures for the enforcement of maritime arbitration agreements in federal courts. Its provisions govern all maritime arbitrations conducted under the auspices of the Society of Maritime Arbitrators and the Maritime Arbitration Rules which follow shall be subordinate to the Act in the event of any conflict.

The United States Arbitration Act is reproduced below in full.

**THE ACT**

**§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title**

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels, and repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce. July 30, 1947, c. 392, § 1, 61 Stat. 669.

**§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate**

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. July 30, 1947, c. 392, § 1, 61 Stat. 669.

**§ 3. Stay of proceedings where issue therein referable to arbitration**

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration. July 30, 1947, c. 392, § 1, 61 Stat. 669.

**§ 4. Failure to arbitrate under agreement; petition to United States Court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination**

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is

raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. As amended Sept. 3, 1954, c. 1263 § 19, 68 Stat. 1233.

**§ 5. Appointment of arbitrators or umpire**

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or any umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator. July 30, 1947, c. 392, § 1, 61 Stat. 669.

**§ 6. Application heard as motion**

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided. July 30, 1947, c. 392 § 1, 61 Stat. 669.

**§ 7. Witnesses before arbitrators; fees; compelling attendance**

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees\* for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons

\* See 28 U.S.C. § 1821 reprinted in Appendix "B" hereof for amount of attendance fee.

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States. July 30, 1947, c. 392, § 1, 61 Stat. 669; Oct. 31, 1951 c. 655, § 14, 65 Stat. 715.

**§ 8. Proceedings begun by libel in admiralty and seizure of vessel or property**

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award. July 30, 1947, c. 392, § 1, 61 Stat. 669.

**§ 9. Award of arbitrators; confirmation; jurisdiction; procedure**

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. July 30, 1947, c. 392 § 1, 61 Stat. 669.

**§ 10. Same; vacation; grounds; rehearing**

In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration -

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators. July 30, 1947, c. 392, § 1, 61 Stat. 669.

**§ 11. Same; modification or correction; grounds order**

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration -

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties. July 30, 1947, c. 392, § 1, 61 Stat. 669.

**§ 12. Notice of motions to vacate or modify; service; stay of proceedings**

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. July 30, 1947, c. 392, § 1, Stat. 669.

**§ 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement**

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it were rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered. July 30, 1947, c. 392, § 1, 61 Stat. 669.

**§ 14. Contracts not affected**

This title shall not apply to contracts made prior to January 1, 1926. July 30, 1947, c. 392, § 1, 61 Stat. 669.

**MARITIME ARBITRATION RULES  
SOCIETY OF MARITIME  
ARBITRATORS, INC.**

**I. RULES A PART OF THE ARBITRATION  
AGREEMENT**

**Section 1. Agreement of Parties** - The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever, in the Submission or otherwise they have provided for arbitration by the Society of Maritime Arbitrators or under its Rules. These Rules and any amendment thereof shall apply in the form obtaining at the time the agreement to arbitrate is effected.

Unless stated to the contrary in advance, the parties agree by consenting to these rules that the Award issued in consequence of their case may be published by the Society of Maritime Arbitrators and/or correspondents.

**II. TRIBUNALS**

**Section 2. Name of Tribunal** - Any Tribunal constituted by the parties for the settlement of their dispute under these Rules shall be called the Maritime Arbitration Tribunal, hereinafter referred to as the "Panel".

**Section 3. Panels of Arbitrators** - The Society shall establish and maintain lists of persons with qualifications as Arbitrators and parties may appoint Arbitrators therefrom in the manner prescribed in these Rules.

**Section 4. Office of Tribunal** - Depending upon the number of arbitrators acting, the office of the Tribunal shall be as follows:

(a) **Sole Arbitrator** - His business or home address, as he elects.

(b) **Two Arbitrators** - The home or business address of either of the Arbitrators, as decided between them. In the event of appointment by them of a third Arbitrator or chairman the office of the Tribunal shall shift to the business or home address of such third Arbitrator.

(c) **Three Arbitrators** - The business or home address of the Third Arbitrator designated by the original two members of the Tribunal appointed by the parties.

**III. INITIATION OF THE ARBITRATION**

**Section 5. Initiation Under an Arbitration Provision in a Contract** - Any party to a contract containing a clause providing for arbitration under the Society Rules, or any party to a contract containing a general arbitration clause when the parties have agreed, by stipulation or otherwise, to arbitrate under the Rules of the Society, may commence an arbitration by such party serving written notice upon the other party of intention to resort to arbitration.

**Section 6. Initiation Under a Submission** - Any party to an existing dispute may commence an arbitration under these Rules by filing with the other party a written request to arbitrate under these Rules (Submission), containing a statement of the matter in dispute, the amount of money involved, if any, and the remedy sought.

After presentation to the Panel, a Submission jointly agreed by the parties may not be changed unilaterally, but only by mutual consent of the parties. The Panel may, in its discretion, permit either party to make necessary corrections or changes to the Submission which are related and consistent with the basic spirit and context of the Submission.

**Section 7. Fixing of Locality** - The locality where the arbitration is to be held shall be New York City if not specified otherwise in the agreement to arbitrate; or unless the parties determine that it is more practical that the arbitration be held elsewhere.

**IV. APPOINTMENT OF ARBITRATOR(S)**

**Section 8. Disqualification** - No person shall serve as an Arbitrator if he has any financial or personal interest in the result of the arbitration nor if he has acquired detailed prior knowledge of the dispute.

**Section 9. Disclosure By Arbitrator(s) of Disqualifying Circumstances** - Preferably at the time of receiving his notice of appointment, but not later than the commencement of the first hearing, a prospective Arbitrator is required to disclose any circumstance tending to raise a presumption of bias or which he believes might disqualify him as an impartial Arbitrator including close personal ties or business relations with any one of, (a) either of the parties (b) other affiliates of the parties, (c) with counsel for either party, or, (d) with the other Arbitrators on the panel.

Upon receipt of such information, the parties, shall declare if willing to proceed under the circumstances disclosed. If either party declines to waive a presumptive disqualification, the vacancy thus created shall be filled in accordance with the applicable provisions of these Rules.

**Section 10. Direct Appointment by Parties** - If the Submission or other agreement of the parties specifies any direct method by which the Arbitrator(s) is to be appointed, that designation or method shall be followed. Upon the request of any party, the Society shall submit a list of members from which the party, shall, if possible, make an appointment.

If a submission or other agreement specifies a period of time within which the Arbitrator(s) shall be appointed, and any party fails to make such appointment within that period, resort may be had to Section 5 of the Act.

**Section 11. Appointment Under Act** - If the parties have not appointed an Arbitrator(s) and have not provided any other method of appointment, the Arbitrator(s) shall be appointed in the manner prescribed in Section 5 of the Act.

**Section 12. Appointment of Additional Arbitrator by Named Arbitrators** - If the parties have named their Arbitrators and have authorized such Arbitrators to appoint an additional Arbitrator within a specified time, and no appointment is made within such time or any agreed extension thereof, resort may be had to Section 5 of the Act.

If no period of time is specified by the parties within which named Arbitrators are to appoint an additional Arbitrator, a period of 30 days from the date of the appointment of the named Arbitrator last appointed shall be allowed for their appointment of the additional Arbitrator. The Society may furnish the named Arbitrators with a Panel list and the appointment of the additional Arbitrator shall, if possible, be made from such list. In the event of their failure to make the appointment within such 30 days, resort may be had to Section 5 of the Act.

**Section 13. Notice of Appointment to Arbitrator(s)** - Notice of the appointment of the Arbitrator(s), whether appointed by the parties or by the Court, shall be sent by the nominating party to the Arbitrator(s), and the acceptance of the Arbitrator(s) shall be communicated to the parties prior to the opening of the first hearing.

**Section 14. Vacancies** - If any Arbitrator(s) should die, withdraw, refuse or be unable to or disqualified from performing the duties of his office, vacancies shall be filled as follows:

(a) If the vacancy is created by an Arbitrator appointed by either party, the one who nominated him will name a replacement, but that replacement shall not have the right to change the chairman previously appointed by the original two Arbitrators.

(b) If the vacancy is created by the chairman the two Arbitrators shall appoint a new chairman.

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

(c) Any other circumstances requiring the filling of vacancies shall be covered by resorting to Section 5 of the Act.

If already heard, the matter shall be reheard, unless the parties agree otherwise.

## V. PROCEDURE FOR ORAL HEARING

**Section 15. Time and Place** - The Arbitrator(s) shall fix the time and place for each hearing and shall mail prior thereto reasonable notice of the first hearing to each party.

**Section 16. Representation by Counsel** - Any party may be represented by counsel. A party so represented or its counsel shall notify in writing the other party and file a copy of the notice, which shall contain the name and address of counsel, reasonably in advance of the date set for the hearing at which counsel is first to appear.

**Section 17. Taking of a Stenographic Record** - The party or parties shall make the necessary arrangements for the taking of a stenographic record of the testimony whenever such record is desired by one or more parties. The requesting party or parties shall initially pay the cost of such record subject to apportionment by the Arbitrators.

**Section 18. Interpreters** - The party or parties shall make the necessary arrangements for the services of an interpreter, if needed. The requesting party or parties shall pay the cost of such service.

**Section 19. Attendance at Hearings** - Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be within the discretion of the Arbitrator(s) whether or not to permit the attendance of any other persons. The Arbitrator(s) shall have the power to require the retirement of any witness or witnesses during the testimony of other witnesses.

**Section 20. Adjournments** - The Arbitrator(s), upon a showing of good cause, may take adjournments at the request of a party. A request by all parties for an adjournment shall be granted unless, in the judgment of the Arbitrator(s), such request will unduly inconvenience the Arbitrator(s) or unduly protract the arbitration.

**Section 21. Oaths** - Before proceeding with the first hearing, or with the examination of the file as provided under Rule VI, each Arbitrator shall take an oath of office.

The Arbitrator(s) shall require witnesses to testify under oath administered by any duly qualified person. (See Appendix C)

**Section 22. Majority Decision** - Whenever there is more than one Arbitrator, the decision and award of the

Arbitrators shall be by majority vote unless the concurrence of all is expressly required by the arbitration agreement.

**Section 23. Order of Proceedings** - A hearing shall be opened by the recording of a Minute by the Arbitrator(s). The Minute shall set forth the place, time and date of the hearing, the presence of the Arbitrator(s) and parties and counsel, if any, and the receipt by the Arbitrator(s) of a written or oral Submission agreement.

The Arbitrator(s) may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party, or his counsel, shall then present the party's claim and proofs and his witnesses who shall submit to questions or other examination. The defending party, or his counsel, shall then present the party's defense and proofs and his witnesses who shall submit to questions or other examination. If it is not clear which party is the complainant, the Arbitrator(s) shall make the determination. The Arbitrator(s) may vary this procedure in his discretion but shall afford full and equal opportunity to all parties for the presentation of any material and relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator(s) and when so received shall be numbered by the Arbitrator(s) and made part of the record. The Arbitrator(s) shall make as part of the record a list of the names and addresses of all witnesses.

**Section 24. Arbitration in the Absence of a Party** - After a default has been established under the provisions of Section 4 of the Act, the arbitration may proceed in the absence of the defaulting party, who, after due notice, failed to be present or failed to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator(s) shall require the other party to submit such evidence as he may require for the making of an award.

**Section 25. Evidence** - The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator(s) may deem necessary to an understanding and determination of the dispute. The Arbitrator(s) may summon witnesses or documents upon his own initiative or at the request of any party by subpoena, if necessary. (See Appendix A)

The Arbitrator(s) shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the Arbitrator(s) and of all the parties except where any of the parties is without reasonable cause absent, in default, or has waived his right to be present or where submission of evidence by mail or in other form has been agreed by both parties.

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

**Section 26. Evidence By Affidavit and Filing of Documents** - The Arbitrator(s) may receive and consider the evidence of witnesses by affidavit, but shall defer ascribing weight to such evidence until after consideration of any objections made to its admission.

All documents not filed with the Arbitrator(s) at the hearing, but which are arranged at the hearing or subsequently by agreement of the parties to be filed later, shall be open to inspection by all parties after such filing.

**Section 27. Inspection or Investigation** - Whenever the Arbitrator(s) deems it necessary to make an inspection or investigation in connection with the arbitration, he shall advise the parties of his intention to make an inspection or investigation. The Arbitrator(s) shall set the time and shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that the parties, or any of them, are not present at the inspection or investigation, the Arbitrator(s) shall make a verbal or written report to the parties and afford an opportunity for the receipt of comment or testimony in relation thereto.

**Section 28. Conservation of Property** - The Arbitrator(s) with the consent of the parties, may issue such orders as may be deemed necessary to safeguard the subject matter of the arbitration, without prejudice to the rights of the parties or to the final determination of the dispute.

**Section 29. Closing of Hearings** - The Arbitrator(s) shall specifically inquire of all parties whether they have further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator(s) shall declare the hearings closed and a Minute thereof shall be recorded. If briefs are to be filed the hearings shall be declared closed as of the final date set by the Arbitrator(s) for the receipt of briefs. If documents are to be filed as provided in Section 26, and the date set for their receipt is later than that set for the receipt of briefs, then such later date shall be the date of closing the hearing. The time limits, referred to in Section 32 of these Rules, within which the Arbitrator(s) is required to make his award, shall commence to run, in the absence of other agreement by the parties, upon the closing of the hearings.

**Section 30. Reopening of Hearings** - The hearings may be reopened by the Arbitrator(s) on his own motion or upon application of a party for good cause shown at any time before the award is made. If the reopening of the hearing would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened unless the parties agree upon the extension of such time limit. When no specific date is fixed in the contract, the Arbitrator(s) may reopen the hearings and the

Arbitrator(s) shall have 90 days from the closing of the reopened hearings within which to make an award.

## VI. PROCEDURE FOR OTHER THAN ORAL HEARINGS

**Section 31. Waiver of Oral Hearings** - The parties, by written agreement, may submit their dispute to arbitration by other than oral hearing. Such arbitration shall be conducted under these Maritime Arbitration Rules, except such provisions thereof as are inconsistent with this Rule VI.

If no method is specified by the parties, proofs shall be presented in the following manner: The parties shall, on a date set by the Panel submit to the Panel their respective contentions in writing, including a Submission agreement together with such other proofs as they may wish to submit. These documents may be accompanied by written arguments or briefs. Copies of all such statements, proofs and briefs shall simultaneously be served upon the other party.

Each party may reply to the other's statement, proofs and brief, but upon the failure of any party to make such a reply within a period of fifteen days after service of such documents upon him, he shall be deemed to have waived the right to reply.

The Arbitrator(s) shall have fifteen days from the date of receipt of reply documents (or, if none, twenty days after receipt of the principal documents) within which to request a party or parties to produce additional proof. Upon receiving such request, the party or parties shall submit such additional proof to the Panel with copies to the other party, within fifteen days from the date of service of such notice. Each party may make reply to such statement and proofs, but, upon the failure of any party to make such a reply within a period of ten days after receipt by him of such documents, he shall be deemed to have waived the right to reply.

Upon mailing or delivery to the Arbitrator(s) of all documents submitted as provided above, the arbitration shall be deemed closed and the time limit within which the Arbitrator(s) shall make his award shall begin to run.

Upon rendering his award, the Arbitrator(s) shall return all proofs and documents to the respective parties as may be requested by them.

## VII. THE AWARD

**Section 32. Time** - The Arbitrator(s) shall render his or their Award as expeditiously as possible but in no case later than 90 days from the receipt by Arbitrators of the last evidence, transcript or brief, whichever shall be the last received.

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

**Section 33. Form** - The award shall be in writing and shall be signed either by the sole Arbitrator or by a majority if there be more than one or by all if unanimous. A partial or total dissent shall be signed by the dissenter and included with the majority award.

**Section 34. Scope** - The Arbitrator(s), in his award, may grant any remedy or relief which he deems just and equitable and within the scope of the Submission agreement of the parties. The Arbitrator(s), in his award, shall assess the arbitration fees and expenses as provided in Section 41, in favor of any party and, any administrative fees or expenses due the Chairman.

**Section 35. Award Upon Settlement** - If the parties settle their dispute during the course of the arbitration, the Arbitrator(s), upon such parties' request, may set forth the terms of the agreed settlement in an award.

**Section 36. Delivery of Award to Parties** - Parties shall accept as legal delivery of the award (a) the placing of the award or a true copy thereof in the mail by the Arbitrator(s), addressed to such party at his last known address or to his attorney, or, (b) personal service of the award.

**Section 37. Release of Certified Documents** - The Arbitrator(s) shall, upon the written request of a party, furnish to such party at the party's expense certified facsimiles of any papers in the Panel's possession.

### VIII. SPECIAL PROVISIONS

**Section 38. Waiver of Rules** - Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with, and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

**Section 39. Time Periods** - The parties may modify any period of time by mutual agreement and consent of the Arbitrator(s). The Arbitrator(s) may extend or shorten any period of time established by the Rules upon a showing of good cause and shall notify the parties of any such extension or shortening of time and reason therefor.

**Section 40. Service of Documents** - Each party to a Submission or other agreement which provides for arbitration under these Rules shall be deemed to have consented and shall consent that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or for the entry of judgment on any award made thereunder may be served upon such party (a) by mail addressed to such party or his attorney at his last known address or (b) by personal

service, within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America). All documents shall bear the date of service and sworn proof thereof shall not be required unless specifically requested by a party or the Arbitrator(s). The Counsel of either party may be utilized by the Panel to implement subpoenas or other legal procedures instituted by the Panel. The expenses and fees for such services are to be allocated as the Arbitrator(s) decide.

### IX. FEES AND EXPENSES

**Section 41. Expenses** - The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic record, if any is made, and all transcripts thereof, shall be pro-rated equally among all parties ordering copies, unless they shall otherwise agree, or the Panel otherwise awards, and shall be paid for by the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required traveling and other expenses of the Arbitrator(s) and the expenses of any witnesses or the cost of any proofs produced at the direct request of the Arbitrator(s), shall be borne equally by the parties, unless they agree otherwise, or unless the Arbitrator(s) in his award assesses such expenses or any part thereof against a specified party or parties.

The travel and living expenses of an Arbitrator(s) from outside the area named for the arbitration shall be borne in the first instance by the party who appointed him, unless the Panel awards otherwise.

The Arbitrator(s) may award to the Chairman any expenses advanced or incurred on behalf of the arbitration proceeding and any fees due and remaining unpaid by any party responsible therefor.

**Section 42. Arbitrator(s) Fee** - The Arbitrator(s) shall determine the amount of his compensation. In determining such amount, regard shall be had to (1) the time taken to hear, consider and determine the issues presented, (2) the magnitude of the claim or subject matter, (3) the complexity of the facts and issues, and (4) the importance or urgency of the matter being arbitrated. If the dispute is settled during the course of the arbitration, the Arbitrator(s) is nevertheless entitled to a fee commensurate with his involvement in the arbitration. The Arbitrator(s) may demand their fees and expenses be paid before releasing the award.

**Section 43. Deposits** - The Arbitrator(s) may require the parties to deposit in advance such sums of money as either deems necessary to defray the expense of the arbitration, including the Arbitrator(s) fee, if any, and shall render an accounting to the parties and return any unexpended balance.

*Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.*

**INTERPRETATION AND  
APPLICATION OF RULES**

**Section 44. Interpretation and Application of Rules -** The Arbitrator(s) shall interpret and apply these Rules insofar as they relate to his powers and duties. When there is more than one Arbitrator, and a difference arises among them concerning the meaning or application of any such Rules, the difference shall be settled by majority vote.

\*\*\*\*\*

Additional copies of these Rules may be purchased from the Society for \$1.00 per copy.

**APPENDIX A**

**- FORMS -**

Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.

In the Matter of the Arbitration  
between  
and  
Submission

In the Matter of Arbitration  
between  
and  
Subpoena

We, the Undersigned Parties, hereby agree to submit to arbitration under the Maritime Arbitration Rules of the Society of Maritime Arbitrators, the following controversy:

TO: .....  
(Name)  
.....  
(Address)  
.....  
(City and State)

You Are Hereby Commanded to appear in an arbitration proceeding to be held at .....  
on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_. at  
\_\_\_\_\_ m. of - said day (and bring with you

We further agree that the above controversy be submitted to the following Panel of Arbitrators:

then and there to testify in the above entitled matter, wherein the disputant parties and their addresses are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Arbitrator  
\_\_\_\_\_  
Arbitrator  
\_\_\_\_\_  
Chairman

(NOTE: Only majority need sign.  
See §7 of Act.)

Signed .....  
(name of party)

By .....

Address .....

Telephone .....

Signed .....  
(name of party)

By .....

Address .....

Telephone .....

Directions

This Submission, when signed by the parties, must be filed with the Panel, as provided in the Rules, in order to institute proceedings under the Rules.

Attorney for .....

Address .....

NOTE: Report to the Arbitrator(s) in Room No. \_\_\_\_\_

Exhibit 4 Annexed to Affidavit of Thomas A. Dillon, Jr.

In the Matter of Arbitration  
between  
  
and

Award

We, .....  
and ..... having been duly appointed,  
arbitrators in the matter in controversy existing between  
..... and .....  
which matter in controversy was framed by the disputants  
in their Submission dated .....  
and having heard all the allegations and proofs of said dis-  
putants, and due deliberation having been had, do hereby  
determine and award (or, do make this award in writing:)

(NOTE: Use all space necessary.)

IN WITNESS WHEREOF, we have subscribed these  
presents, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Arbitrator

\_\_\_\_\_  
Arbitrator

\_\_\_\_\_  
Chairman

**APPENDIX B  
- WITNESS ATTENDANCE FEES -**

According to Section 7 of the Act, witness attendance fees shall be the same as the fees of witnesses before masters of the United States courts. The governing law, 28 U.S. Code § 1821, reads as follows:

**§1821. Per diem and mileage  
generally; subsistence**

A witness attending in any court of the United States, or before a United States commissioner, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall receive \$20 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 10 cents per mile for going from and returning to his place of residence. Regardless of the mode of travel employed by the witness, computation of mileage under this section shall be made on the basis of a uniform table of distances adopted by the Attorney General. Witnesses who are not salaried employees of the Government and who are not in custody and who attend at points so far removed from their respective residence as to prohibit return thereto from day to day shall be entitled to an additional allowance of \$16. per day for expenses of subsistence including the time necessarily occupied in going to and returning from the place of attendance: Provided, That in lieu of the mileage allowance provided for herein, witnesses who are required to travel between the Territories and possessions, or to and from the continental United States, shall be entitled to the actual expenses of travel at the lowest first-class rate available at the time of reservation for passage, by means of transportation employed: Provided further, That this section shall not apply to Alaska.

When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of \$1 per day.

Witnesses in the District Courts for the Districts of Canal Zone, Guam and the Virgin Islands shall receive the same fees and allowances provided in this section for witnesses in other district courts of the United States.

As amended Mar. 27, 1968 Pub. L. 90-274 § 102(b) 82 Stat. 62.

APPENDIX C  
- OATHS -

These oaths may be administered by the Recorder, or in the case of a hearing without recorder, by any one person to another, the affiant raising his right hand when being sworn.

1. Oath to be taken by Arbitrator:

"Do you solemnly swear that you will faithfully and fairly hear and examine the matter in controversy and make a just award, according to the best of your understanding?"

2. Oath to be taken by Witness:

"Do you solemnly swear that the testimony you are about to give shall be the whole truth?"

3. Oath to be taken by Interpreter:

"Do you solemnly swear that you will faithfully and fairly translate in a verbatim and objective manner from the -----language to the -----language or vice versa the oral or written communications you will be called upon to interpret?"

A 282

EXHIBIT 5--LETTER DATED JANUARY 16, 1975 ANNEXED TO  
AFFIDAVIT OF THOMAS A. DILLON, JR.

LLOYD C. NELSON  
20 BROADWAY 8TH FLOOR  
NEW YORK, N. Y. 10006

January 16, 1975

Professor Lowenfeld  
c/o N. Y. U. School of Law  
40 Washington Square South  
New York, N. Y. 10012

Dear Professor,

Re: NEREUS/HIDECA  
Arbitration

I have given some thought to completing this Panel. As you are aware the "Esso Voy" Form originally called for arbitration before the American Arbitration Association. This was subsequently changed to the present arbitration clause because I feel there was a sincere desire to have disputes arbitrated before individuals conversant in shipping matters.

With this in mind I would like to suggest for your consideration the following gentlemen:

Donald L. Caldera, Vice President  
Qualpeco Services Inc.  
Graduate Yale Law School  
Member Society Maritime Arbitrators (SMA)

H. Hunter, Vice President  
Delta Lines, Inc.  
Law School Graduate  
New member SMA

Donald Zubrod, President of SMA

Hammond Cederholm, Director SMA

Howell B. Smith, Member SMA

Fred Sauer, Former President of SMA

A 283

*Exhibit 5 Annexed to Affidavit of Thomas A. Dillon, Jr.*

For your added guidance I enclose photostats of pages from the Society membership booklet referring to these gentlemen.

Very truly yours,

LCM:mbw  
Encl.

**CEDERHOLM, Hammond L.**

Born 1921.

Vice President operations James W. Elwell & Co., Inc., Owners and Operators of Tramp Vessels. Formerly for 13 years with Chilean Nitrate Sales Corp. as Manager of Chartering and Operations of Time Chartered Fleet. Over 30 years experience managing and operating for major time charter operators and fleet owned bulk carriers.  
Telephone: (212) 432-0380.

**ZUBROD, Donald E.**

Born 1924.

Executive Vice-President Admanthos Shipping Agency, Inc. Has been in shipping since 1941. Experienced in operations, chartering, claims and engineering department. Has served as arbitrator in maritime disputes, as well as having prepared and presented cases for his company.  
Telephone: (212) 432-5150.

**SMITH, Howell B.**

Born 1898.

Associated with Smith & Johnson (Shipping) Inc. since 1924, handling all phases of shipping. Has been active in shipping since 1920; served with United States Navy in World War I and with War Shipping Administration, Department of State, during World War II.  
Telephone: (212) DI 4-4500.

**CALDERA, Donald L.**

Born 1935.

Vice President Qualpeco Services Inc., a transportation firm - motor carriers, leasing, and diversified consulting with emphasis on financial and administrative aspects of marine transportation. Formerly officer of Inter-Freight, division of American Export Industries, with container and break-bulk shipping, trucking, freight forwarding, terminals and equipment leasing. Line experience in berth line services, containerization, design, operation and financing of all types of vessels.  
Telephone: (212) 682-5550 Home (914) 591-8894

**SAUER, Ferdinand E.**

Born 1920.

Now with Lamorte Burns Co., Inc.

Over 25 years of experience in the field of foreign trade with intensive experience in time and voyage chartering of vessels and cargoes, bulk terminal operations, export and import shipping and documentation, steamship conference negotiations.  
Telephone: (212) 432-0400.

New York University

School of Law  
Faculty of Law

40 Washington Square South, Room 343  
New York, N.Y. 10012  
Telephone: (212) 598-2321

January 22, 1975

Mr. Lloyd C. Nelson  
29 Broadway - 6th Floor  
New York, New York 10006

Dear Mr. Nelson:

Re: Nereus/Hideca

Many thanks for your letter of January 16, 1975. I share with you the desire to agree on a third arbitrator as soon as possible. Quite apart from the complications of two related disputes running in parallel, the parties are entitled to a prompt resolution of the dispute that they have asked us to arbitrate. It is too bad that Judge Lawrence E. Walsh, who we both agree combined judicial experience, intellectual attainments, and sufficient familiarity with maritime matters, could not see his way clear to accepting the assignment. My hope still is that we can find as chairman of our panel a person of comparable qualifications.

Frankly, I believe that the members of the Society of Maritime Arbitrators whom you proposed in your last letter do not, (so far as I can judge without knowing any of them personally) quite fill the bill. From what I understand of the dispute that we have been asked to arbitrate, it goes well beyond the typical factual dispute concerning a charter party. Indeed, if it had been that kind of dispute, I would have been an inappropriate nominee myself. My understanding is that the dispute involves not only a complicated set of facts but also questions of conflict of laws, possible interpretation of foreign law, the effect of unforeseen circumstances, and the like. While I have no doubt that you can handle these problems, my judgment is that the panel would be more successful if the chairman were an experienced lawyer or judge.

- 2 -

Accordingly, I would like to renew some of the nominations that I have given you over the phone in the last couple of months, and suggest a few additional names that we have not yet talked about:

1. Judge Stanley Fuld, formerly Judge and Chief Judge of the New York Court of Appeals, and (I am told) recently active in a number of arbitrations.
2. Judge Samuel C. Coleman, formerly Judge of the Civil Court of New York, and before going on the bench a lawyer with the maritime law firm of Burlingham & Underwood. As I mentioned to you, I served with Judge Coleman on an arbitration involving ship construction, and while the case was settled before award, I found Judge Coleman to be a very able arbitrator, interested in and knowledgeable about international and maritime matters.
3. Mr. Bayless Manning, currently President of the Council on Foreign Relations and formerly Dean of the Stanford Law School, Special Assistant to the Under Secretary of State, and Professor of Law at Yale Law School. Mr. Manning, as I think I mentioned, has taught both international and commercial law, and has the reputation of being a brilliant lawyer and problem solver.
4. Mr. Robert Hellawell, Professor and Vice Dean of Columbia University School of Law. Dean Hellawell teaches Admiralty, Taxation, and International Transactions at Columbia, and is also Consultant to the United Nations Commission on International Trade Law (UNCITRAL).

We have talked about all of these persons on the telephone, but I renew my suggestion that you consider them with care.

In addition to the above, I have been thinking of other eminent lawyers in the New York area and have a few more suggestions to make.

5. Hon. Francis Plimpton, senior partner of Debevoise, Plimpton, Lyons & Gates, and formerly United States Ambassador to the United Nations and President of the Association of the Bar of the City of New York.

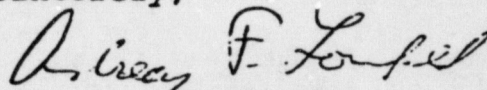
- 3 -

6. Mr. Whitney North Seymour, senior partner of the New York firm of Simpson, Thacher & Bartlett, and former President of the American Bar Association, the Association of the Bar of the City of New York, and the American College of Trial Lawyers.
7. Mr. Orison S. Marden, senior partner of the New York law firm of White & Case, and former President of the American Bar Association, the Association of the Bar of the City of New York, and the New York State Bar Association, as well as a Fellow of the American College of Trial Lawyers.
8. Mr. John J. Barrett, senior partner of the firm of Barrett, Smith, Schapiro & Simon.
9. Mr. Edward J. Ross, senior partner of the firm of Breed, Abbott & Morgan.

You will see that all of the persons in this group have in common that they are established leaders of the Bar, experienced in complicated international transactions, as well as in the settlement of disputes at all levels.

I hope you will give the above list your careful attention, and that we may get together soon to start our real work.

Sincerely,



Andreas F. Lowenfeld  
Professor of Law

*Exhibit 5 Annexed to Affidavit of Thomas A. Dillon, Jr.*

LLOYD C. NELSON  
29 BROADWAY 6TH FLOOR  
NEW YORK, N. Y. 10006

January 29, 1975

Professor Andreas F. Lowenfeld  
New York University  
40 Washington Square South, Room 343  
New York, New York 10012

Dear Professor Lowenfeld:

Re: Nereus/Hideca Arbitration

Please excuse my not responding immediately to your letter dated January 22, 1975.

As I have previously pointed out, the dispute concerning which we have both been appointed as arbitrators is one which arose under a charter party which you advised me was on the Essovoy 1969 form, which is one of the most widely used commercial forms of charter parties used in the shipping business. As such, it contains an arbitration clause which does not even specify that the arbitrators shall be lawyers.

All of the persons which I have suggested to act as the third arbitrator are members of the Society of Maritime Arbitrators. All are experienced in the shipping business and have vast experience as arbitrators of disputes under charter parties on the Essovoy 1969 form, as well as other customary charter party forms.

Again, it is my opinion that, if parties wish to have disputes resolved pursuant to full legal precedents and based on Court rules of evidence, they do not agree to a commercial arbitration clause. Customarily in disputes under a charter party shipping men, such as those who are members of the Society of Maritime Arbitrators, act as the Panel. As you know, I am a commercial shipping man and the applicable charter form does not specify that the arbitrators are to be lawyers. If the parties had wished to have the dispute decided by lawyers, the charter should have either specified that the Panel was to be made up of lawyers, or should have deleted the arbitration clause altogether.

*Exhibit 5 Annexed to Affidavit of Thomas A. Dillon, Jr.*

Moreover, the accepted practice with respect to maritime arbitrations is that prior to the first hearing, none of the arbitrations are familiar with the specific issues, facts, or positions of the parties with respect to either claims or defenses. For this reason, I am surprised that you have stated in your letter that the dispute in this case "goes well beyond the typical factual dispute concerning a charter party" and that it is your understanding "that the dispute involves not only a complicated set of facts, but also questions of conflict of laws, possible interpretations of foreign law, the effect of unforeseen circumstances, and the like". I would hope that you have not been put in the position whereby you would be disqualified to act as an arbitrator.

Even though you saw fit to reject the suggestions contained in my letter of January 16, 1975 before you actually received it, I would appreciate it if you would give some consideration to the list of experienced maritime arbitrators which I submitted.

Very truly yours,

Lloyd C. Nelson

LCN:mbw

REPLY AFFIDAVIT OF DAVID L. MALOOF IN SUPPORT OF MOTION  
FOR APPOINTMENT OF ARBITRATOR PURSUANT TO 9 USC §5

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter of the Arbitration between

HIDROCARBUROS Y DERIVADOS, C.A.,

75 Civ. 464 (CES)

Petitioner,

and

NEREUS SHIPPING, S.A.,

REPLY AFFIDAVIT  
IN SUPPORT OF  
PETITIONER'S  
MOTION FOR  
APPOINTMENT OF  
ARBITRATOR

Respondent.

-----x

STATE OF NEW YORK )

ss.

COUNTY OF NEW YORK)

DAVID L. MALOOF, being duly sworn, deposes and says upon  
information and belief:

The second arbitrator in the Hideca arbitration was chosen either  
on August 23, 1974 or September 9, 1974. As of now, about five months  
later, the two arbitrators are still unable to agree on an available and  
acceptable umpire.

The charter party reads in part:

"In the event that the two arbitrators fail  
to appoint a third arbitrator within twenty  
days of the appointment of the second  
arbitrator, either arbitrator may apply  
to a Judge of any court of maritime

jurisdiction in the city above-mentioned [New York] for the appointment of a third arbitrator, and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators."

Because Nereus desires to arbitrate first against Cepsa, it would be satisfied if an umpire is never appointed but this Court has the power and duty to appoint one.

The issues in this case have little maritime substance except that a contract of affreightment is involved. There is no issue of the unseaworthiness of the ship or any other esoteric maritime detail.

The issues involve an analysis of a contract, fundamental breaches, waivers of such breaches, the application of Moroccan law, as well as simple questions involving ship delay. The reason that the demurrage claims were not paid are because Hideca never received the underlying papers and, therefore, had no basis upon which to make the payments. These papers were finally hand-delivered on July <sup>16</sup> 3, 1974. These claims will probably not be the subject of arbitration if the papers support them.

Millions of dollars (about \$7,000,000.00) ride upon the determination of these legal concepts. Hideca's arbitrator has proposed well qualified persons with judicial and legal background who will be well able to judge these questions. The names he has proposed include Judge Stanley Fuld, Judge Samuel C. Coleman, Mr. Bayless Manning, Mr. Robert

*Reply Affidavit of David L. Maloof*

Hellawell, Mr. Francis T. P. Plimpton, Mr. Whitney North Seymour, Mr. Orisen S. Marden, Mr. John J. Barret, and Mr. Edward J. Ross. Your Honor will find no booklet in which their names appear.

That Mr. Nelson, Nereus' arbitrator, agrees with the above concept is shown by his approval of the name of Judge Lawrence Walsh, a former District Judge of this Court who, unfortunately, declined to serve.

The Nereus arbitrator has proposed commercial maritime people, either officers of steamship companies or maritime engineers. These persons certainly are well qualified in their respective fields but deponent respectfully suggests that a different background and experience is required to understand the broad legal issues here involved.

FOR THE FOREGOING REASONS deponent requests this Court to disregard Nereus' request for a further delay of the Hideca arbitration and to nominate a third arbitrator in that arbitration so that it can proceed promptly.

/s/ David L. Maloof  
DAVID L. MALOOF

Sworn to before me this

20th day of February, 1975.

Notary Public

ELLEN F. CARTER  
Notary Public, State of New York  
No. 39-5831000  
Qualified in Nassau County  
Commission Expires March 30, 1978

A 293

REPLY AFFIDAVIT OF LAWRENCE W. NEWMAN DATED FEBRUARY 20, 1975

Identical to Reply Affidavit of Lawrence W. Newman  
printed herein at pages A155 to A165.

---

MEMORANDUM AND ORDER OF JUDGE STEWART

Identical to Memorandum-Opinion of Stewart, D.J.  
printed herein at pages A218 to A222.

## NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In the Matter of the Arbitration  
between

HIDROCARBUROS Y DERIVADOS, C.A.,

Petitioner,

- against -

NEREUS SHIPPING, S.A.,

Respondent.

-----X

NOTICE OF APPEAL

75 Civ. 464 (CES)

Notice is hereby given that NEREUS SHIPPING, S.A., respondent above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum, Decision and Order of the Honorable Charles E. Stewart, Jr., dated March 20, 1975, directing NEREUS SHIPPING, S.A., to arbitrate with HIDROCARBUROS Y DERIVADOS, C.A., and COMPANIA ESPANOLA DE PETROLEOS, S.A., in a consolidated arbitration before five (5) arbitrators, despite the fact that the separate arbitration agreements between NEREUS SHIPPING, S.A., and HIDROCARBUROS Y DERIVADOS, C.A., and between NEREUS SHIPPING, S.A., and COMPANIA ESPANOLA DE PETROLEOS, S.A., each provided for arbitration before a panel of three (3) arbitrators, and in effect dismissing the panel of three (3) arbitrators previously appointed in the

A 295

Notice of Appeal

arbitration between NEREUS SHIPPING, S.A., and COMPANIA ESPANOLA  
DE PETROLEOS, S.A.

Dated: March 25, 1975

BURKE & PARSONS

By:

*Samuel Nelson*

---

A Member of the Firm  
Attorneys for Nereus Shipping, S.A.  
52 Wall Street  
New York, New York 10005  
(212) 344-1030

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff-Appellant-Cross-  
Appellee,

against

NEREUS SHIPPING, S.A.,

Defendant-Appellee-Cross-  
Appellant.

HIDROCARBUROS y DERIVADOS, C.A.,

Plaintiff-Appellee,

against

NEREUS SHIPPING, S.A.,

Defendant-Appellant.

(And one other action)

State of New York,  
County of New York,  
City of New York—ss.:

IRVING LIGHTMAN

, being duly sworn, deposes

and says that he is over the age of 18 years. That on the 29th  
day of July, 1975, he served one copies of

Joint Appendix

Counsel to on

Donovan, Donovan, Maloof & Walsh, of/, the attorneys  
for Plaintiff-Appellee and Petitioner-Appellee

by delivering to and leaving same with a proper person in charge of  
their office at 161 William Street

in the Borough of Manhattan, City of New York, between  
the usual business hours of said day.

*Irving Lightman*

Sworn to before me this

29th day of July, 1975.

*Courtney Brown*

COURTNEY J. BROWN  
Notary Public, State of New York  
No. 31-5472920  
Qualified in New York County  
Commission Expires March 30, 1976

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff-Appellant-Cross-  
Appellee,

against

NEREUS SHIPPING, S.A.,

Defendant-Appellee-Cross-  
Appellant.

HIDROCARBUROS y DERIVADOS, C.A.,

Plaintiff-Appellee,

against

NEREUS SHIPPING, S.A.,

Defendant-Appellant.

(And one other action)

State of New York,  
County of New York,  
City of New York—ss :

IRVING LIGHTMAN, being duly sworn, deposes  
and says that he is over the age of 18 years. That on the 29th  
day of July, 1975, he served one copies of  
Joint Appendix on  
Baker & McKensie, the attorneys  
for Plaintiff-Appellee and Petitioner-Appellee  
by delivering to and leaving same with a proper person in charge of  
their office at 375 Park Avenue  
in the Borough of Manhattan, City of New York, between  
the usual business hours of said day.

*Irving Lightman*

Sworn to before me this

29th day of July, 1975.

*Courtney Brown*

COURTNEY J. BROWN  
Notary Public, State of New York  
No. 31-5472920  
Qualified in New York County  
Commission Expires March 30, 1976

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Plaintiff-Appellant-Cross-  
Appellee,

against

NEREUS SHIPPING, S.A.,

Defendant-Appellee-Cross-  
Appellant.

HIDROCARBUROS y DERIVADOS, C.A.,

Plaintiff-Appellee,

against

NEREUS SHIPPING, S.A.,

Defendant-Appellant.

(And one other action)

State of New York,  
County of New York,  
City of New York—ss.:

IRVING LIGHTMAN, being duly sworn, deposes  
and says that he is over the age of 18 years. That on the 29th  
day of July, 1975, he served one copies of  
Joint Appendix on  
Poles Tublin, Patestides & Stratakis, the attorneys  
for Plaintiff-Appellant-Cross-Appellee CEPSA  
by delivering to and leaving same with a proper person in charge of  
their office at 46 Trinity Place  
in the Borough of Manhattan, City of New York, between  
the usual business hours of said day.

*Irving Lightman*

Sworn to before me this

29th day of July, 1975.

*Courtney J. Brown*

COURTNEY J. BROWN  
Notary Public, State of New York  
No. 31-5472920  
Qualified in New York County  
Commission Expires March 30, 1976

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK )

: SS.:

COUNTY OF RICHMOND

EDWARD BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. That on the 22nd day of July, 1975, deponent served the within appendix upon the following appellees at the addresses indicated herein, by delivering a true copy thereof to each of them personally. Deponent knew the persons so served to ~~the~~ be the persons mentioned and described in said papers as the Appellees therein:

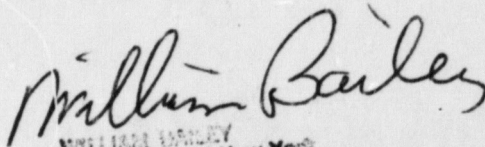
Diamond & Golomb, Attorneys for Canadian Javelin, 99 Park Avenue, New York, N.Y.  
Booth & Baron, Attorneys for McGraw-Hill and Standard & Poors, 122 E. 42nd St., NYC  
Lord, Day & Lord, Attorneys for American Stock Exchange, 25 Broadway, NYC  
Patterson, Bellknapp & Webb, Attorneys for Dow, Jones and Pinkerton, 30 Rockefeller Plaza, NYC  
Sullivan & Cromwell, Attorneys for Bache & Co. and Miami Herald, 48 Wall St., NYC  
Delson & Gordon, Attorneys for Edwards & Hanly, Arthur Foote, Robert Della and  
Raymond Aronson, 230 Park Ave. NYC

Butowsky, Schwenke & Devine, Attorneys for Weiss & Baer, 230 Park Ave., NYC

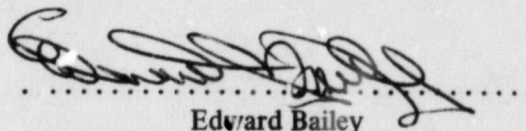
~~XX~~  
Breed, Abbott & Morgan, Attorneys for Burns Bros. & Timmins, 1 Chase Manhattan Pl., NYC  
Leonard Toboroff, Atty. for Chartered New England Corp., F. S. Moseley and  
Estabrook, Inc., 400 Park Ave., NYC

~~XX~~  
Stroock, Stroock & Lavan, Attys. for Loeb, Rhodes, 61 Broadway, NYC  
Abraham L. Bienstock, Attys. for dyer, Maguire, Dritz, 30 Broad St., NYC  
Paul Scott, Atty. for Pressman, Frohlick & Frost, 1 State St. Plaza, NYC  
Olitt, Friedberg & Kagel, Attys. for Muller & Co., 200 Park Ave., NYC.  
Cravath, Swaine & Moore, Attys. for Pickands, Mather, 1 Chase Manhattan Pl., NYC  
Malcolm A. Hoffman, Atty. for Wright Engineers, 12 E. 41st St., NYC  
Lunney & Crocco, Attys. for Wood, Walker, 20 Exchange Place, NYC  
Sibberfeld, Danziger & Bangser, Attys. for World Mining, 230 Park Avenue, NYC  
Satterlee & Stephens, Attys. for Watts, Griffis & McQuat, 277 Park Ave., NYC

Sworn to before me this 22nd  
day of July, 1975.



WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1978 7

  
.....  
Edward Bailey



STATE OF NEW YORK     )  
                                      : SS.  
COUNTY OF RICHMOND    )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 22 day of July , 1975 deponent served the within Appendix     Upon Larry Grimes

attorney(s) for   SEC

in this action, at     500 North Capitol St., Washington, D. C.

the address(es) designated by said attorney(s) for that purpose by depositing <sup>a</sup> true copy ~~copies~~ of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

.....  
ROBERT BAILEY

Sworn to before me, this  
22 day of July , 1975.

*William Bailey*  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1976